92D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 92-672

FAIR LABOR STANDARDS AMENDMENTS OF 1971

NOVEMBER 17, 1971.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY, SEPARATE, INDIVIDUAL AND ADDITIONAL VIEWS

[To accompany H.R. 7130]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7130) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage under that act, to extend its coverage, to establish procedures to relieve domestic industries and workers injured by increased imports from low-wage areas, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the matter that appears in italic type in the reported bill.

INTRODUCTORY STATEMENT

The Fair Labor Standards Act of 1938 was enacted on June 25, 1938. The basic policy of the Act is contained in its second section:

> Sec. 2(a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor dis-

putes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Purpose of the Legislation

The bill seeks to implement the policy of the Act by (1) providing an increase in the minimum wage rate, (2) extending the benefits and protection of the Act to workers engaged in commerce or in the production of goods for commerce, or employed in enterprises engaged in commerce or in the production of goods for commerce, and (3) establishing procedures for the relief of domestic industries and workers injured by increased imports from low-wage areas.

The bill provides that the minimum wage rate for nonagricultural employees covered under the minimum wage provisions of the Act prior to the effective date of the 1966 amendments to the Act, and for Federal employees covered by the 1966 amendments, will be $2.00 an hour beginning January 1, 1972. The proposed minimum wage rate for nonagricultural employees covered under the minimum wage provisions of the Act by the 1966 and 1971 amendments will be $1.80 an hour beginning January 1, 1972, and $2.00 an hour beginning January 1, 1973. For agricultural employees covered under the minimum wage provisions of the Act, the minimum wage rate will be $1.50 an hour beginning January 1, 1972, and $1.70 an hour beginning January 1, 1973. The minimum wage rates for hotel, motel, restaurant, food service, conglomerate, and certain public employees in Puerto Rico and the Virgin Islands, will be in accordance with those applicable to such employees in the United States. Other employees in Puerto Rico and the Virgin Islands presently covered by wage orders would be entitled to percentage increases in the wage orders on January 1, 1972, and January 1, 1973, based upon increases in the applicable U.S. minimum wage rates.

The wage increases provided by the bill were attuned to considerations of correcting and as rapidly as practicable eliminating labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers without substantially curtailing employment or earning power. It is firmly believed that these gradual and belated increases, approximately equivalent to productivity and cost-of-living increases in recent years, can be absorbed by the national economy as easily as all previous increases in the minimum wage rate.

TABLE 1.—PROPOSED INCREASE IN THE MINIMUM WAGE RATE

Employee wage schedules	Hourly rate	Effective date
Nonagricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act prior to the effective date of the 1966 amendments (including Federal employees covered by the 1966 amendments).	$2.00	Jan. 1, 1972
Nonagricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act by the 1966 and 1971 amendments.	1.80	Jan. 1, 1972
	2.00	Jan. 1, 1973
Agricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act.	1.50	Jan. 1, 1972
	1.70	Jan. 1, 1973
Hotel, motel, restaurant, food service, conglomerate, and public employees in Puerto Rico and the Virgin Islands.	Identical coverage as that for counterparts in United States.	
Other employees in Puerto Rico and the Virgin Islands presently covered by a wage order..	Percentage increases in wage orders on Jan. 1, 1972, and Jan. 1, 1973, based upon increase in the applicable U.S. rate.	

TABLE 2.—PROPOSED EXTENSION OF MINIMUM WAGE AND OVERTIME PROTECTION

Minimum wage coverage will be extended to the following:	Overtime coverage will be extended to the following:
Federal employees.	Federal employees.
State and local employees.	State and local employees.
Domestic service employees.	Domestic service employees.
Conglomerate employees.	Conglomerate employees.
Preschool center employees.	Preschool center employees.
	Agricultural processing employees.
	Transit system employees.
	Nursing home employees (modification of present exemption).
	Sugar processing employees.
	Maids and custodial employees of hotels and motels.

Title III of the bill establishes procedures for the relief of domestic industries and workers injured by increased imports from low-wage areas.

Upon the request of the President, or upon resolution of either House of Congress, or upon application of the representative of any employer organization in a domestic industry, or upon application of any interested party, or upon his own motion, the Secretary of Labor shall make an investigation to determine whether any product is being imported into the United States which is causing or substantially contributing to serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States or the economic welfare of the community in which any such group of workers is employed. Should the Secretary find that an imported product is causing such consequences, he will promptly report to the President and publish his findings. Upon receipt of the report, the President shall take such action as he deems appropriate, in addition to any other customs treatment provided by law.

Also, any contract to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party or under which payment is to be made in whole or in part from loans or grants from, or loans insured or guranteed by, the United States or any agency or instrumentality thereof, which exceeds $10,000 for the manufacture or furnishing of materials, supplies,

or equipment which is performed outside any State but is for use within a State shall require: First, that all persons employed by the contractor in carrying out the contract be employed on terms and conditions which are not substantially less favorable to his employees than those which would be required under the Fair Labor Standards Act; and second, that the contractor make such reports as are necessary to enable the contracting agency to insure that the contractor complies with the provisions of the contract required herein.

Committee Consideration

The General Subcommittee on Labor began public hearings on legislation amending the Fair Labor Standards Act on June 17, 1970. Hearings continued in 1970 for 17 days until September 17, and were resumed on April 20, 1971, for 7 additional days; two of which were conducted in San Juan, Puerto Rico, and dealt solely with the application of the minimum wage rate in Puerto Rico and the Virgin Islands. Testimony was received from a multitude of witnesses, including the Honorable James D. Hodgson, Secretary of Labor, and other witnesses from government, labor, industry, business, and other interested groups and individuals.

The subcommittee commenced discussion and mark-up sessions on the legislation beginning July 21, 1971. On September 30, 1971, the subcommittee ordered reported H.R. 7130, as amended, by a vote of 9–2.

The Committee on Education and Labor considered the bill in open mark-up session beginning October 6. On October 14—by a vote of 26–7—the Committee ordered reported H.R. 7130 with an amendment. The Committee amendment is in the form of a new text. The discussion and analysis that follows is of the Committee amendment, and all references to the bill are references to the Committee amendment.

History of the Act

On June 25, 1938, one of the Nation's basic labor laws was enacted—the Fair Labor Standards Act of 1938. The first statutory minimum wage was established at 25 cents an hour for the year beginning October 24, 1938. It was made applicable to all employees, not specifically exempted, who were engaged in commerce or in the production of goods for commerce.

The original Act provided that the statutory minimum wage would be raised to 30 cents an hour beginning October 24, 1939. A procedure was established for raising the minimum wage by stages to a level of 40 cents an hour, industry by industry, as rapidly as possible; but, in any case, 40 cents an hour was to become the national minimum wage within 7 years after the effective date of the Act; this is, by October 24, 1945.

During the interval, intermediate minimum wages were applied to different industries on recommendation of industry committees. The last order of the Wage and Hour Administrator raising the minimum wage to 40 cents an hour was issued in July 1944, 1 year before the date set by the Act for the 40 cents an hour minimum wage rate to become applicable.

The Act also established an overtime rate (not less than 1½ times the employee's regular hourly rate) which was to be paid employees

for employment in excess of certain maximum hours in a workweek. Thus, during the first year of the Act, that is, from October 24, 1938, to October 23, 1939, a maximum hours standard of 44 hours a week was applied to cover employees; during the second year, 42 hours became the standard; and after 2 years, the standard was reduced to 40 hours a week. The time-and-one-half penalty overtime rate has never been altered, although amendments were passed in subsequent years increasing the statutory minimum wage and extending coverage to unprotected workers.

The Fair Labor Standards Amendments of 1949 increased the minimum hourly wage rate from 40 cents to 75 cents (to take effect January 25, 1950), representing an 87½ percent raise. The Fair Labor Standards Amendments of 1955 provided another increase in the minimum hourly wage rate which brought that wage rate to $1 an hour effective March 1, 1956, representing a 33⅓ percent increase.

The Fair Labor Standards Amendments of 1961 raised the minimum hourly wage rate by 25 percent to $1.25, effective on September 3, 1963. An intermediate increase to $1.15 an hour was provided effective September 3, 1961. Employees covered by the Act for the first time because of the changes made in the Act by the 1961 amendments, which revised the exemptions and extended the Act's coverage, received a minimum wage of not less than $1 an hour beginning September 3, 1961; $1.15 an hour beginning September 3, 1964; and $1.25 an hour beginning September 3, 1965. Employees brought within the coverage of the Act by the 1961 amendments received overtime protection beginning September 3, 1963, for hours worked in excess of 44 in any workweek. Effective September 3, 1964, the overtime protection of the Act was extended to such employees for hours worked in excess of 42 in any workweek, and effective September 3, 1965, for hours worked in excess of 40 in any workweek.

Prior to the 1961 amendments, coverage under the Act was limited to individual employees who were themselves engaged in commerce or in the production of goods for commerce or in any closely related process or occupation directly essential to production. The 1961 amendments enlarged the scope of the Act by adding another basis of coverage—employment in an "enterprise engaged in commerce or in the production of goods for commerce." Under this basis of coverage the minimum wage and overtime protection of the Act was extended to each and every employee of such an enterprise, unless specifically exempted.

The Fair Labor Standards Amendments of 1966 increased the minimum hourly wage rate by 28 percent to $1.60, effective on February 1, 1968. An intermediate increase to $1.40 an hour was provided effective February 1, 1967. Employees covered under the minimum wage provisions of the Act for the first time by the 1966 amendments, which also revised the exemptions and extended the Act's coverage, were provided a minimum rate of not less than $1 an hour beginning February 1, 1967; $1.15 an hour beginning February 1, 1968; $1.30 an hour beginning February 1, 1969; $1.45 an hour beginning February 1, 1970; and $1.60 an hour beginning February 1, 1971. Newly covered agricultural employees were provided a minimum wage rate of not less than $1 an hour beginning February 1, 1967; $1.15 an hour beginning February 1, 1968; and $1.30 an hour beginning February 1, 1969. Employees brought within the overtime protection of the Act by the 1966 amendments received overtime compensation beginning

February 1, 1967, for hours worked in excess of 44 in any workweek; beginning February 1, 1968, for hours worked in excess of 42 in any workweek; and effective February 1, 1969, for hours worked in excess of 40 in any workweek.

In addition to extending the protection of the Act to large groups of employees employed in private activities which had theretofore been completely exempt from coverage—such as agriculture—the 1966 amendments were particularly notable for their inclusion of public employees within the parameter of the Act. A significant number of Federal employees were then covered, but the 1966 amendments also extended coverage to public employees employed in hospitals and related institutions, schools and institutions of higher education, and local transit operations.

In *Maryland et. al.* v. *Wirtz, Secretary of Labor, et. al.*, The Supreme Court considered the contention of appellants—28 States and a school district—who sought to enjoin enforcement of the Act as it applies to schools and hospitals operated by the States or their subdivisions. Appellants argued that the "enterprise concept" of coverage and the inclusion of State-operated hospitals and schools were beyond Congress' power under the Commerce Clause, that the remedial provisions of the Act, if applied to States, would conflict with the Eleventh Amendment, and that school and hospital enterprises do not have the statutorily required relationship to interstate commerce. A three-judge district court declined to issue a declaratory judgment or an injunction, and concluded that the adoption of the "enterprise concept" and the extension of coverage to State institutions do not, on the face of the Act, exceed Congress' commerce power. That court declined to consider the Eleventh Amendment and statutory relationship contentions.

The Supreme Court affirmed the judgment of the lower court and held:

1. The "enterprise concept" of coverage is clearly within the power of Congress under the Commerce Clause.

(a) A rational basis for Congress' finding the scheme necessary to the protection of commerce was the logical inference that the pay and hours of employees of an interstate business who are not production workers, as well as those who are, affect an employer's competition with companies elsewhere. *United States* v. *Darby*, 312 U.S. 100, followed.

(b) Another rational basis is the promotion of labor peace by the regulation of wages and hours, subjects of frequent labor disputes.

(c) The class of employers subject to the Act, approved in *Darby, supra*, was not enlarged by the addition of the "enterprise concept."

2. The commerce power provides a constitutional basis for extension of the Act to State-operated schools and hospitals.

(a) Congress has "interfered with" state functions only to the extent that it subjects a State to the same minimum wage and overtime pay limitations as other employers whose activities affect commerce.

(b) Labor conditions in schools and hospitals can affect commerce and are within the reach of the commerce power.

(c) Where a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State may be forced to conform its activities to Federal regulation. *United States* v. *California*, 297 U.S. 175.

3. Questions concerning the States' sovereign immunity from suit and whether particular State-operated institutions have employees handling goods in commerce are reserved for appropriate concrete cases.

With reference to the objectives of the Act, the Supreme Court, speaking through Mr. Justice Burton, has observed:

> In this Act, the primary purpose of Congress was not to regulate interstate commerce as such. It was to eliminate, as rapidly as practicable, substandard labor conditions throughout the Nation. It sought to raise living standards without substantially curtailing employment or earning power. * * *
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> The Act declared its purposes in bold and sweeping terms. Breadth of coverage was vital to its mission. Its scope was stated in terms of substantial universality * * * (*Powell* v. *United States Cartridge Co.*, 339 U.S. 497 at 509–510, 516 (1950)).

In contrast with the broad objectives of the Act its present coverage is much more confined in scope.

The Act was a response to call upon a Nation's conscience, at a time when the challenge to our democracy was the tens of millions of citizens who were denied the greater part of what the very lowest standards of the day called the necessities of life; when millions of families in the midst of a great depression were trying to live on income so meager that the pall of family disaster hung over them day by day; when millions were denied education, recreation, and the opportunity to better their lot and the lot of their children; when millions lacked the means to buy the products of farm and factory and by their poverty denied work and productiveness to many other millions; and when one-third of a nation was ill housed, ill clad, and ill nourished.

On May 24, 1937, in a message to the Congress, President Franklin D. Roosevelt, stated that—

> Our Nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours.
>
> Enlightened business is learning that competition ought not to cause bad social consequences which inevitably react upon the profits of business itself. All but the hopelessly reactionary will agree that to conserve our primary resources of manpower, Government must have some control over maximum hours, minimum wages, the evil of child labor, and the exploitation of unorganized labor.
>
> And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum stand-

> ards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade.

On October 26, 1949, upon the occasion of the signing of the Fair Labor Standards Amendments of 1949, President Harry S Truman stated:

> This Act has proved to be wise and progressive remedial legislation for the welfare not only of our wage earners but of our whole economy.

On April 21, 1960, while appearing before the Subcommittee on Labor Standards of the Committee on Education and Labor, House of Representatives, the Honorable James P. Mitchell, Secretary of Labor, cited President Dwight D. Eisenhower's continuing support for this basic legislation. Secretary Mitchell stated:

> In his first economic report issued in January 1954, President Eisenhower said that "an effective minimum wage program should cover millions of low-paid workers now exempted."
>
> In his 1955 report, the President indicated that "the coverage of the minimum wage is no less important than its amount."
>
> In 1956, he stated that "the need for an extension of coverage remains, and the Congress is again requested to proceed as far as is practical in this direction."
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> This request was repeated in 1957, 1958, and 1959, and in his last report the President reiterated that "the Congress is again requested to extend coverage of the Fair Labor Standards Act to several million workers not now receiving its protection."

In a special message to the Congress on February 2, 1961, President John F. Kennedy recommended a minimum wage increase and expanded coverage of the Fair Labor Standards Act of 1938. President Kennedy declared:

> This will improve the income, level of living, morale, and efficiency of many of our lowest paid workers, and provide incentives for their more productive utilization. This can actually increase productivity and hold down unit costs, with no adverse effects on our competition in world markets and our balance of payments.

Now in its fourth decade the Act has meant much to many—greater dignity and security and economic freedom for millions of American workers, and an upswing in economic growth for the country as a whole.

However, as President Lyndon B. Johnson, stated in his message to the Congress of May 18, 1965:

> Many American workers whose employment is clearly within the reach of this law have never enjoyed its benefits. Unfortunately, these workers are generally in the lowest wage groups and most in need of wage and hour protection. We must extend minimum wage and overtime protection to them.

It is the committee's intention to extend the Act's coverage in such a manner as to completely assume the Federal responsibility insofar as is presently practicable and to raise the minimum wage to a level which will prevent the disgraceful and intolerable situation of workers and their families dwelling in poverty.

The Present Act

At the present time, about 40 percent of the Nation's wage and salary workers in the civilian labor force are outside the coverage of the Act. The law presently covers only 45.5 million of the nearly 75 million wage and salary workers in the United States. A substantial number of these 75 million are beyond the scope of the Act's practical, possible, or needed coverage. Almost 13 million, for instance, are executive, administrative, or professional personnel; for whom the minimum wage provisions of the Act would have little relevance. But of the remainder—some 62 million—who might be brought within the wage and hour guarantees, over 16 million are not in fact covered.

TABLE 3.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE FAIR LABOR STANDARDS ACT, BY INDUSTRY

[In thousands]

Industry	Total number of employees in industry	Number of employees covered	Number of employees not covered or exempt
Agriculture	1,190	535	655
Mining	559	554	5
Contract construction	3,219	3,202	17
Manufacturing	17,549	16,987	562
Transportation, communications, utilities	4,092	4,018	74
Wholesale trade	3,307	2,513	794
Retail trade	10,054	5,886	4,168
Finance, insurance, real estate	3,170	2,400	770
Services (excluding domestic service)	8,542	6,068	2,474
Domestic service	2,125		2,125
Federal Government	2,365	693	1,672
State and local government	5,732	2,655	3,077
Total	61,904	45,511	16,393

About 2 million of those not covered are exempt as "outside salesmen" under section 13(a)(1) of the Act. Some others are in occupations where wage rates are already higher than any practical minimum wage level or where hours of service are already compensated, at least in accordance with the overtime requirements of the Act. But it is evident that a sizeable number of American workers continue to be denied the most basic protection afforded by the Act.

Brief Summary of Provisions

TITLE I—INCREASE IN MINIMUM WAGE

Sec. 101. *Nonagricultural Employees.*—Provides a minimum wage rate for nonagricultural employees covered by the Act prior to the effective date of the 1966 amendments, and Federal employees covered by the 1966 amendments, of not less than $2.00 an hour effective January 1, 1972.

Provides a minimum wage rate for nonagricultural employees covered by the 1966 and 1971 amendments to the Act of not less than $1.80 an hour effective January 1, 1972, and not less than $2.00 an hour effective January 1, 1973.

SEC. 102. *Agricultural Employees.*—Provides a minimum wage rate for agricultural employees covered by the Act of not less than $1.50 an hour effective January 1, 1972, and not less than $1.70 an hour effective January 1, 1973.

SEC. 103. *Government, Hotel, Motel, Restaurant, and Food Service Employees in Puerto Rico and the Virgin Islands.*—Establishes a minimum wage rate for employees of hotels, motels, restaurants, food service establishments, conglomerates, and the Government of the United States and the Virgin Islands in Puerto Rico and the Virgin Islands in conformance with the applicable rate in the United States.

SEC. 104. *Other Employees in Puerto Rico and the Virgin Islands.*—Provides for a 25 per centum increase in the most recent wage order applicable to an employee in Puerto Rico and the Virgin Islands covered by the Act prior to the effective date of the 1966 amendments. Such increase shall become effective on January 1, 1972.

Provides for two 12.5 per centum increases in the most recent wage order applicable to a nonagricultural employee in Puerto Rico and the Virgin Islands covered by the 1966 amendments. Such increases shall become effective on January 1, 1972, and January 1, 1973.

Provides for two 16 per centum increases in the most recent wage order applicable to an agricultural employee in Puerto Rico and the Virgin Islands covered by the Act. Such increases shall become effective on January 1, 1972, and January 1, 1973. In the case of an agricultural employee whose hourly wages are subsidized, in whole or in part, by the Government of Puerto Rico, the per centum increase shall be applied to the most recent wage order, increased by the amount of the subsidy.

Provides for the establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1971 amendments (other than employees described in section 103). Also requires that all special industry committees recommend the minimum wage rate applicable in the United States except where pertinent financial information demonstrates inability to pay such rate.

Retains the review procedure first established by the 1961 amendments. This procedure permits any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands to petition the Secretary for the appointment of a special industry committee to recommend the minimum wage rate or rates to be paid such employees in lieu of the rate or rates required as a result of the percentage increases. The Secretary may then appoint a special industry committee if he has reasonable cause to believe that employment in such industry will otherwise be substantially curtailed.

Provides further that, notwithstanding any other provision, no wage rate for covered employees may be less than 60 per centum of the minimum wage rate applicable to counterpart employees in the United States beginning January 1, 1972.

TITLE II—EXTENSION OF COVERAGE; REVISION OF EXEMPTIONS

SEC. 201. *Federal and State Employees.*—Amends the definitions of "employer," "enterprise," and "enterprise engaged in commerce or in the production of goods for commerce," to include the United States and any State or political subdivision of a State; thereby permitting the extension of minimum wage and overtime coverage to Federal, State, and local public employees.

SEC. 202. *Transit Employees.*—Reduces and ultimately repeals the overtime exemption for any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency. During 1972, overtime compensation must be paid to such employees for hours worked in excess of 48 per week; during 1973, for hours worked in excess of 44 per week; and, beginning January 1, 1974, for hours worked in excess of 40 per week. In determining the hours of employment of such an employee, hours employed in charter activities shall not be included if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

SEC. 203. *Nursing Home Employees.*—Amends the overtime exemption for nursing home employees to require overtime compensation for hours worked in excess of 8 in any workday and 80 hours in any fourteen consecutive day work period. This coverage is identical to that for hospital employees. The present overtime exemption for nursing home employees requires overtime compensation for hours worked in excess of 48 in any workweek.

SEC. 204. *Sugar Employees.*—Repeals the overtime exemption for employees engaged in the processing of sugar beets, sugarbeet molasses, sugarcane, or maple sap, into sugar or syrup.

SEC. 205. *Seasonal Industry Employees.*—Reduces and ultimately repeals the overtime exemption for employees in seasonal industries and agricultural processing. Existing law provides an overtime exemption for employment in seasonal industries up to 10 hours in any workday or 50 hours in any workweek for not more than 10 workweeks during the calendar year. Existing law also provides an overtime exemption for employment in agricultural processing up to 10 hours in any workday or 48 hours in any workweek for not more than 10 workweeks during the calendar year. In the case of an employer who does not qualify for the overtime exemption under both categories, the exemption is extended to 14 workweeks during the calendar year for the category under which he does qualify.

This section reduces the overtime exemption for employment in seasonal industries to 9 hours in any workday or 48 hours in any workweek for not more than 7 workweeks during the calendar year of 1972, and for not more than 5 workweeks during the calendar year of 1973. The overtime exemption for employment in agricultural processing

is reduced to 9 hours in any workday (the 48 hours per week limitation in existing law is not affected) for not more than 7 workweeks during the calendar year of 1972, and for not more than 5 workweeks during the calendar year of 1973. In the case of an employer who does not qualify for the overtime exemption under both categories, the exemption is reduced from 14 workweeks during the calendar year to 10 workweeks during 1972, and 7 workweeks during 1973. Effective January 1, 1974, the overtime exemptions are repealed.

SEC. 206. *Domestic Service Employees Employed in Households.*—States a finding of Congress that domestic service in households directly affects commerce and that the minimum wage and overtime protections of the Act should have been available to such employees since its enactment. This section prescribes therefore, the minimum wage (not less than $1.80 an hour effective January 1, 1972; not less than $2.00 an hour effective January 1, 1973) and overtime (compensation for hours worked in excess of 40 per week) rates applicable to such employees. The provision is not applicable in the case of any such employee who resides in the household of his employer. Domestic service employees are described as those whose compensation for services constitutes "wages" under section 209 of the Social Security Act.

SEC. 207. *Equal Pay for Equal Work.*—Applies the sex discrimination in employment prohibition of section 6(d) of the Act to any employee employed in an executive, administrative, or professional capacity, or in the capacity of outside salesman. Also states the intent of Congress that, notwithstanding any other provision of law, the remedies provided by section 16 of the Act (Penalties) shall be available to any employee against an employer who violates section 6(d).

SEC. 208. *Employment of Students.*—Provides for the employment of full-time students (regardless of age but in compliance with applicable child labor laws) at wage rates less than those prescribed by the Act in any occupation other than an occupation listed in the section or one determined by the Secretary to be particularly hazardous for the employment of such students. Students may be employed at a wage rate of not less than 85 per centum of the applicable minimum wage rate or $1.60 an hour ($1.30 an hour in the case of employment in agriculture), whichever is the higher, pursuant to special certificates issued by the Secretary. Such special certificates shall provide that such students shall, except during vacation periods, be employed on a part-time basis (not to exceed 20 hours in any workweek). In the case of an employer who intends to employ five or more students under this section, the Secretary may not issue a special certificate unless he finds the employment of any such student "will not create a substantial probability of reducing the full-time employment opportunities" of other workers. In the case of an employer who intends to employ less than five students under this section, the Secretary may issue a special certificate if the employer certifies to the Secretary that he is not thereby reducing the full-time employment opportunities for other workers. Sections 15 (Prohibited Acts) and 16 (Penalties) of the Act would be applicable to an employer who violated the requirements of this section. A summary of the special certificates issued under this provision is required to be included in the Secretary's annual report required by section 4(d) of the Act.

Section 208 also provides that the Secretary may, by regulation or order, waive the minimum wage and overtime provisions of the Act with respect to a student employed by his elementary or secondary school, where such employment constitutes an integral part of the regular education program provided by the school.

SEC. 209. *Employees of Preschool Centers.*—Amends the definitions of "enterprise" and "enterprise engaged in commerce or in the production of goods for commerce," to include preschool centers; thereby permitting the extension of minimum wage and overtime coverage to employees of preschool centers.

SEC. 210. *Laundry and Cleaning Establishments to be Considered Service Establishments for Certain Purposes.*—Requires the consideration of laundries and dry cleaning establishments as service establishments for purposes of the administration of sections 7(i) (relating to commission employees) and 13(a)(1) (relating to executive and administrative personnel and outside salesmen) of the Act.

SEC. 211. *Maids and Custodial Employees of Hotels and Motels.*—Extends overtime coverage to maids and custodial employees of hotels and motels.

SEC. 212. *Employees of Conglomerates.*—Precludes the availability of the minimum wage and overtime exemptions of section 13 of the Act (except those relating to employees employed in executive, administrative, or professional capacities, or in the capacity of outside salesman, and the overtime exemptions relating to employees whose hours of service are subject to the provisions of the Motor Carrier Act, Interstate Commerce Act, or Railway Labor Act) to conglomerates with an annual gross volume of sales made or business done in excess of $5,000,000. The exemptions then, shall not apply with respect to any employee employed by "an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $5,000,000 (exclusive of excise taxes at the retail level which are separately stated)."

SEC. 213. *Employment Referrals by Public Employment Services Agencies.*—Prohibits public employment service agencies from assisting in the placement of any individual with an employer who will pay such individual at a wage rate less than the minimum wage rate applicable to nonagricultural employees covered under the minimum wage provisions of the Fair Labor Standards Act by the 1966 and 1971 amendments. Also requires that such agencies shall keep current a listing of local employment opportunities offered by the United States or by an employer provided Federal funds to pay all or part of the compensation for the job, and make such listing available to individuals seeking employment through any such agency.

SEC. 214. *Employment of Illegal Aliens.*—Provides that any employer subject to the Act who knowingly employs any alien who is in the United States in violation of law or in an immigration status in which the employment is not authorized, shall be guilty of a misdemeanor

and subject to punishment. Also provides that any contract subject to the Davis-Bacon Act, Walsh-Healey Act, or Service Contract Act, shall contain an additional provision by which the contractor agrees not to employ any such alien in the performance of the contract.

TITLE III—RELIEF FOR DOMESTIC INSTITUTIONS AND EMPLOYEES INJURED BY INCREASED IMPORTS FROM LOW-WAGE AREAS

SEC. 301. *Relief for Domestic Institutions and Employees Injured by Increased Imports From Low-Wage Areas.*—Amends section 2 of the Act (Finding and Declaration of Policy) to include the recognition by the Congress that the unregulated importation of goods produced by industries in foreign nations under labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

Also declares it to be the policy of the Act through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to provide for the regulation of imports of goods in such manner as will correct and as rapidly as possible eliminate any serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States and the economic welfare of the communities in which they are employed from conditions above referred to in the industries providing them employment in which increased imports are a substantially contributing factor.

Amends section 4 of the Act to implement the policy declared by the above amendments to section 2 of the Act. Upon the request of the President, or upon resolution of either House of Congress, or upon application of the representative of any employee organization in a domestic industry, or upon application of any interested party, or upon his own motion, the Secretary of Labor shall promptly make an investigation and make a report thereon not later than 4 months after the application is made to determine whether any product is being imported into the United States under such circumstances, due in whole or in part to the fact that such foreign goods were produced under conditions such as the detrimental labor conditions referred to above, which are causing or substantially contributing to serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States or to the economic welfare of the community in which any such group of workers are employed. In the course of any such investigation the Secretary or his delegate shall hold hearings. Should the Secretary find that an imported product is or likely will be sold in competition with like or competitive goods produced in the United States under

such circumstances, he shall promptly report his finding to that effect to the President. Upon receipt of the Secretary's report, the President shall take such action as he deems appropriate to remove such impairment or threat of impairment, in addition to any other customs treatment provided by law.

Also amends section 4 of the Act to impose requirements in the case of any contract:

(1) which is for the manufacturing or furnishing of materials, supplies, articles, or equipment,

(2) which is an amount exceeding $10,000,

(3) which is to be performed outside any State, but is for goods, supplies, articles, or equipment to be used within a State, and

(4) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party or under which payment is to be made in whole or in part from loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof.

Such contract shall require (A) all persons employed by the contractor in carrying out the contract to be employed on terms and conditions which are not substantially less favorable to such persons than those which would be required under the Act if the contract were to be performed within a State, and (B) the contractor to make such reports, in such form and containing such information, as may be required to enable the contracting agency (or such other Federal agency as the President may designate) to insure that the contractor complies with provisions of the contract required by this subsection, and to keep such records and afford such access thereto as such agency may find necessary to assure the correctness and verification of such reports.

TITLE IV—TECHNICAL AMENDMENTS

SEC. 401. *Conforming Amendments.*
SEC. 402. *Updating Amendments.*

TITLE V—EFFECTIVE DATE

SEC. 501. *Effective date.*—Provides that the effective date of the 1971 amendments shall be January 1, 1972, except as otherwise provided.

COMMENTS ON MAJOR PROVISIONS

INCREASE IN THE MINIMUM WAGE RATE FOR EMPLOYEES COVERED UNDER THE ACT PRIOR TO THE 1966 AMENDMENTS

More than 34 million nonsupervisory employees at work in September 1970 [1] were in establishments covered prior to the 1966 amendments and have been subject to the $1.60 minimum wage rate since February 1, 1968. For these employees, and the nearly 700,000 Federal employees covered by the 1966 amendments, the bill proposes an increase in the minimum wage rate to $2.00 an hour effective January 1, 1972.

[1] The most recent date for which all such data is available.

TABLE 4.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE FAIR LABOR STANDARDS ACT PRIOR TO THE EFFECTIVE DATE OF THE 1966 AMENDMENTS, BY INDUSTRY

[In thousands]

Industry	Total number of employees in industry	Number of employees covered prior to 1966 amendments
Agriculture	1,190	554
Mining	559	554
Contract construction	3,219	2,633
Manufacturing	17,549	16,926
Transportation, communications, utilities	4,092	3,906
Wholesale trade	3,307	2,390
Retail trade	10,054	3,319
Finance, insurance, real estate	3,170	2,319
Services (excluding domestic service)	8,542	2,203
Domestic service	2,125	
Federal Government	2,365	
State and local government	5,732	
Total	61,904	34,250

The impact of a $2.00 an hour minimum wage rate, effective January 1, 1972, would be felt by less than 10 per cent of the 34,250,000 employees covered by the Act prior to the effective date of the 1966 amendments; or, by an estimated 3,172,000 employees. These are employees who are now earning less than $2.00 an hour. There would be no impact on the Federal employees covered by the 1966 amendments.

When the 1966 amendments—increasing the minimum wage rate to $1.60 an hour—were enacted, they represented a promise that a full-time worker compensated at the minimum wage rate could at least earn what was considered to be the poverty level of income; which at that time was about $3,200 annually for a family of four ($1.60 an hour x 40 hours per week x 50 weeks per year=$3,200 annually). Since then, increases in the price level as reflected in the Consumer Price Index have reflected the bankruptcy of that promise.

When Secretary Hodgson testified before the committee on May 12, 1971, he cited recent data by the Bureau of the Census which placed the poverty threshold for a 4-person nonfarm family at $3,968 per year. Increases in the Consumer Price Index since the Secretary's testimony would well justify an increase to over $4,000 a year; and if income is from work, financial considerations for the payment of Social Security and Federal income taxes must be taken into account, bringing the annual income requirement for subsistance at the poverty threshold to about $4,500.

Nearly two-thirds of the 24 million poor in America are members of families headed by a worker in the labor force—be that worker low-wage, part-time, or unemployed. About one-quarter of the poor—and more than 30 percent of all children growing up in poverty—are in families headed by a full-time, year-round worker whose wages are so low that his family is impoverished.

An increase in the minimum wage rate to at least $2.00 an hour is required—virtually immediately—if only on the basis of simple economic fact. At $2.00 an hour, a full-time worker would earn approximately $4,000 a year—close to the 1970 poverty threshold.

It is not insignificant that today's minimum wage of $1.60 buys less than the $1.25 minimum wage bought in 1966; or that, if a cost-

of-living increase mechanism had been incorporated into the 1966 amendments, today's minimum wage rate would exceed $2.00 an hour.

One of the traditional charges against proposed increases in the minimum wage rate—especially during periods of prolonged inflation—is that such increases further aggravate the inflationary trend. The committee is pleased to note that a spokesman for the U.S. Chamber of Commerce, in testimony before the Senate Subcommittee on Labor on related legislation, did not associate that organization with the charge. At that time, Dr. Richard S. Landry, Administrative Director, Economic Analysis and Study Group, U.S. Chamber of Commerce, said in response to a statement by the Chairman of the subcommittee:

> We do not contend, unlike some of the witnesses that appeared before you apparently, that the minimum wage is inflationary. Quite the opposite. Inflation is not caused by minimum wages. * * *

In actual fact, inflation adversely affects the lowest income worker—including minimum wage earners—more harshly than any other. He is its sorriest victim.

As one witness testified:

> We do not believe any employed workers should be forced to go on welfare in order to survive.
>
> These people work hard at useful jobs; struggle to maintain their economic independence and self-dignity; and attempt to achieve self-reliance against overwhelming odds. Yet they are paid less than a subsistence wage.

The committee subscribes to this witness' conclusion that the "simplest, most direct and least expensive way to eliminate most poverty is to modernize the Fair Labor Standards Act."

Another charge against proposed increases in the minimum wage rate is that such increases create unemployment. Section 4(d) of the Act requires an annual report by the Secretary of Labor, which report "shall contain an evaluation and appraisal by the Secretary of the minimum wages established by this Act . . . ". Reports by Secretaries of Labor—in all administrations—have shown substantial benefits and only rare, isolated instances of adverse effects.

In the 1971 report of the Secretary, however, is historical data on the relationship between the minimum wage and average hourly earnings. As the report states:

> . . . minimum wages have been traditionally compared to gross average hourly earnings of production workers in manufacturing for purposes of evaluating the efficacy or desirability of changes in the level of the FLSA minimum, or of assessing the effects of legislative changes.

With respect to this comparison, the report concluded that:

> The relationship between the minimum wage and average hourly earnings or average hourly compensation varies, depending upon whether account is taken of changes in coverage. Although the minimum wage has been increased substantitally, its ratio to earnings has been largely eroded

by gains in average hourly earnings between the periods of increases in the minimum wage. *Consequently, the ratio of the minimum wage to average hourly earnings or to average hourly compensation per man hour is now lower than it was in 1950, when the 1949 amendments went into effect.* (emphasis supplied)

INCREASE IN THE MINIMUM WAGE RATE FOR EMPLOYEES COVERED UNDER THE ACT BY THE 1966 AMENDMENTS

Over 11 million nonsupervisory employees were covered under the minimum wage provisions of the Act by the 1966 amendments.

TABLE 5.—ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES COVERED UNDER THE FAIR LABOR STANDARDS ACT BY THE 1966 AMENDMENTS, BY INDUSTRY

[In thousands]

Industry:	*Number of employees covered by 1966 amendments*
Agriculture	535
Mining	------
Contract construction	569
Manufacturing	61
Transportation, communications, utilities	112
Wholesale trade	123
Retail trade	2, 567
Finance, insurance real estate	81
Services (excluding domestic service)	3, 865
Domestic service	------
Federal Government	693
State and local government	2, 655
Total	11, 261

With the exception of the 693,000 Federal employees covered, and the 535,000 agricultural employees covered, the bill would increase the minimum wage rate for such employees to not less than $1.80 an hour effective January 1, 1972, and not less than $2.00 an hour effective January 1, 1973. The Federal employees presently covered would be subject to the same rate as that applicable to employees covered prior to the 1966 amendments. The proposed minimum wage rate for covered agricultural employees will be discussed below.

Of the remaining 10,033,000 employees covered by the 1966 amendments, a $1.80 an hour minimum wage rate—effective January 1, 1972—would mean wage increases for an estimated 2,338,000. These are employees who are now earning less than $1.80 an hour.

The impact of a $2.00 an hour minimum wage rate—effective January 1, 1973—would mean wage increases for an estimated 2,931,000 employees who, at that time, will be earning less than $2.00 an hour.

INCREASE IN THE MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES COVERED UNDER THE ACT

The 1966 amendments extended the minimum wage protection of the Act to 535,000 employees employed in agriculture. The present minimum wage rate for such employees is—and has been since February 1, 1969—$1.30 an hour. The bill proposes to increase that rate to not less than $1.50 an hour effective January 1, 1972, and not less

than $1.70 an hour effective January 1, 1973. The bill does not propose an extension of minimum wage coverage to additional agricultural employees.

A $1.50 an hour minimum wage rate—effective January 1, 1972—would mean wage increases for an estimated 114,000 of the 535,000 agricultural employees covered under the Act. These are employees who are now earning less than $1.50 an hour.

A $1.70 an hour minimum wage rate—effective January 1, 1973—would mean wage increases for an estimated 152,000 agricultural employees who, at that time, will be earning less than $1.70 an hour.

APPLICATION OF THE MINIMUM WAGE RATE TO EMPLOYEES PROPOSED TO BE COVERED UNDER THE ACT BY THE 1971 AMENDMENTS

The bill would extend the minimum wage protection of the Act to approximately 6 million employees.

TABLE 6.—ESTIMATED DISTRIBUTION OF NONSUPERVISORY EMPLOYEES WHO WOULD BE BROUGHT UNDER THE MINIMUM WAGE PROTECTION OF THE ACT BY THE BILL

[In thousands]

Industry	Total number of employees in industry	Number of employees now covered	Number of employees to be covered by the bill
Federal Government	2,365	693	1,672
State and local government	5,732	2,655	3,077
Domestic service	2,125		1,139
Conglomerates	(1)	(1)	(1)
Preschool centers	(1)	(1)	(1)
Total			5,888

[1] No estimate available.

Note: The estimate of 5,888,000 employees proposed to be covered under the minimum wage provisions of the act by the bill does not include those employees of conglomerates and preschool centers who would be covered by certain of the bill's provisions.

For such employees, the bill would require a minimum wage rate of not less than $1.80 an hour effective January 1, 1972, and not less than $2.00 an hour effective January 1, 1973.

The $1.80 an hour rate would mean wage increases for the following employees who are now earning less than $1.80 an hour:

Industry:	*Employees earning less than $1.80 an hour*
Federal Government	
State and local government	119,000
Domestic service	1,101,000
Total	1,220,000

The $2.00 an hour minimum wage rate—effective January 1, 1973—would mean wage increases for the following employees who, at that time, will be earning less than $2.00 an hour:

Industry:	*Employees earning less than $2.00 an hour*
Federal Government	
State and local government	167,000
Domestic service	1,119,000
Total	1,286,000

Puerto Rico and the Virgin Islands

Although the Fair Labor Standards Act applies to employees in Puerto Rico and the Virgin Islands, it does not require the payment of the minimum wage rate prescribed by section 6(a)(1); that is, the rate of $1.60 an hour. Instead, the Act provides for industry committees to convene and recommend minimum wage rates for the various occupations and industries in Puerto Rico and the Virgin Islands. The recommendations are to the Secretary of Labor who, in turn, translates them into wage orders. The wage orders then, represent the minimum wage rates applicable to Puerto Rico and the Virgin Islands. As of February 1, wage orders ranged from a minimum hourly rate of $0.47 an hour for hand-sewers of fabric gloves to the rate of $1.60 an hour for several occupations and industries.

Industry committees are appointed by the Secretary of Labor and are required to review minimum wage rates within the industries at least once during each biennial period. The purpose of each industry committee is "to reach as rapidly as is economically feasible without substantially curtailing employment" the $1.60 minimum wage rate. Each industry committee is charged with the obligation to recommend the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in Puerto Rico and the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands. Whenever the industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry than may be determined for other employees in the industry, the industry committee "shall recommend reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined." No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex.

An industry committee is composed of residents of the island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. The Secretary appoints an equal number of persons representing (a) the public, (b) employees in the industry, and (c) employers in the industry. The public members are disinterested parties, and the Secretary designates one as chairman.

The Department of Labor provides each industry committee with data pertinent to the matters referred to it, as well as a counsel and economist. An industry committee receives prehearing statements from employers, employees, trade associations, trade unions, and all other interested parties, and conducts hearings on the subject matter. A committee itself may call witnesses not otherwise scheduled to testify.

Promptly after receipt of all evidence, a committee attempts to resolve the issues before it and prepare a report containing its findings of fact and recommendations. After receiving a committee's report, the Secretary of Labor publishes the recommendations in the Federal Register and provides by order that the recommendations take effect upon the expiration of 15 days after the date of publication.

If an industry committee is unable to arrive at a recommendation within a reasonable time, or refuses to make a recommendation, it may be dissolved by the Secretary. An industry committee ceases to perform further functions when it has filed with the Department its report, and shall not again perform any functions with respect to any matter reported on, unless and until directed otherwise. An industry committee is dissolved automatically when its recommendations are no longer subject to judicial review (within 60 days after the issuance of the Secretary's wage orders).

With two notable exceptions the bill preserves the industry committee approach for ultimately achieving the applicable U.S. minimum wage rate in Puerto Rico and the Virgin Islands. The committee believes, however, that the economic situation in the islands—and particularly in Puerto Rico—has undergone substantial change during the past 30 years and that the 1971 amendments would likely be the last to provide special wage procedures.

The two exceptions are:

(1) The minimum wage rate for hotel, motel, restaurant, food service, conglomerate, and Government of the United States and the Virgin Islands employees in Puerto Rico and the Virgin Islands will be determined—effective January 1, 1972—in accordance with the applicable minimum wage rate in the mainland.

(2) Percentage increases are applied to the most recent wage orders applicable to other employees in Puerto Rico and the Virgin Islands. The increases are applicable on January 1, 1972, and January 1, 1973, and are determined by the amounts of the percentage increases in applicable U.S. minimum wage rates. Such increases may be reviewed by industry committees appointed by the Secretary.

With respect to the first exception, the committee concluded—after studying a substantial amount of testimony relating to the application of the Act in Puerto Rico and the Virgin Islands—that hotel, motel, restaurant, food service, conglomerate, and government employees in the islands should be covered by the Act the same as their U.S. counterparts. It is significant that wage orders presently applicable in the islands require a minimum hourly rate of $1.60 an hour for all employees in hotels and motels with 100 or more sleeping rooms, $1.60 an hour for arts and crafts workers in hotels and motels with less than 100 sleeping rooms, $1.55 an hour for all other workers in hotels and motels with less than 100 sleeping rooms, $1.60 an hour for tipped employees in restaurants and food service establishments, and $1.50 an hour for all other employees in restaurants and food service establishments.

The present coverage then, is already virtually identical to the U.S. coverage.

Hearings in Puerto Rico revealed that the cost-of-living is higher in Puerto Rico than it is in the U.S.; yet, the minimum wage rates are substantially lower. Thus the lower income worker is especially burdened by the higher costs of basic food stuffs, transportation, and essentials. An automobile selling in the United States for $2,100, sells for $3,100 in Puerto Rico. Another selling for less than $3,000 in the U.S., sells for more than $4,000 in Puerto Rico.

Food prices are staggering as well. According to a recent survey, the grocery bill of a San Juan resident is 13.6 percent more than that

of a consumer in Fort Worth, Texas. When comparisons are made with consumers in New York and Washington, the gap is even broader.

Yet, the profit margins of establishments in Puerto Rico are usually greater than those of their U.S. counterparts. For instance, supermarkets in the U.S. were showing a 1.2 to 1.4 percent return after taxes in 1966. During the same period in Puerto Rico, supermarkets were enjoying a 3.4 to 4.4 percent return.

Establishments in Puerto Rico generally enjoy special advantages not available to U.S. producers, such as complete exemption from Federal income taxes, subsidies, and exemption from Puerto Rico income taxes for a period of 10 to 17 years, depending upon the location of production.

These facts justify the consideration of employees and establishments in the islands on at least a parity with those in the U.S. insofar as the equitable application of the Fair Labor Standards Act is concerned; and certainly so in the case of those industries—such as hotels and restaurants—that have already demonstrated the ability to pay their workers the U.S. minimum wage rate without suffering adverse economic effects.

With respect to other workers in Puerto Rico and the Virgin Islands, the bill would provide percentage increases in existing wage orders based upon increases in the applicable U.S. minimum wage rates.

An exception to this provision is the case of agricultural employees whose hourly wages are subsidized by the Government of Puerto Rico.

Subparagraph 3(C) of section 104(a) of the bill provides that any agricultural employee whose hourly wages are subsidized, in whole or in part, by the Government of Puerto Rico will receive an increase, effective January 1, 1972, of 16 percent on the combined amount of the most recent wage order and the subsidy in effect on October 7, 1971. Effective January 1, 1973, such an employee will receive an increase of 16 percent of the combined amount of the most recent wage order applicable before January 1, 1972, and the amount of the subsidy in effect on October 7, 1971.

This provision affects certain Puerto Rican agricultural workers. For example, the most recent wage order for sugar workers provides 65 cents an hour and the Commonwealth of Puerto Rico subsidizes the wages paid by their employers at the rate of 35 cents per man hour. The 35 cents is to be paid on top of the wage order for a total employee wage of $1.00 an hour.

Without this provision, the subsidized workers would get little or no benefit from the minimum wage increases scheduled in H.R. 7130, because the increase generally provided in the bill or the "60 per cent provision" in paragraph (7) (contained in section 104(a)) would be applicable only to the wage order rate of 65 cents an hour.

The provision therefore assures that subsidized agricultural employees will get the same percentage increase in their government-prescribed wage as all other covered farm workers.

All percentage increases in wage orders prescribed by the bill (except those applicable to subsidized agricultural employees) are subject to the review procedure first established by the 1961 amendments. This procedure permits any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands to petition the Secretary for the appointment of a special industry committee to recommend the minimum wage rate or

rates to be paid such employees in lieu of the rate or rates required as a result of the percentage increases. The Secretary may then appoint a special industry committee if he has reasonable cause to believe that employment in such industry will otherwise be substantially curtailed.

In appointing any such special industry committee the Secretary shall, to the extent possible, appoint persons who were most recently convened to recommend the minimum rate or rates of wages to be paid by any such employer or employers in Puerto Rico or the Virgin Islands. The existing provisions and requirements relating to industry committees shall be equally applicable to those appointed for the purpose of reviewing the percentage increases prescribed by the bill.

The bill provides a supplemental requirement of all special industry committees, in addition to those presently contained in section 8(b) of the Act. The Act now requires that a special industry committee recommend "the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands."

Section 104(b)(1) of the bill would require special industry committees to recommend the appropriate minimum wage required in the U.S. mainland to employers unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years, and other relevant economic data such as prices and productivity, etc., which establish that the industry, or a predominant portion thereof, is unable to pay that wage and the result would be a substantial curtailment of employment.

In establishing the industry committees, Congress intended that their findings as to the highest minimum a Puerto Rican or Virgin Islands industry could pay, up to the applicable mainland minimum, would be based on record-evidence adequate to reveal the financial and economic condition of the covered employers. However, the committee has concluded that the industry committees at times are not provided with the requisite data. As a result, the industry committee proceedings have on a number of occasions degenerated into a process by which a majority of the members work their will knowing that the record is bare of the facts necessary to controvert their argument that higher wages would substantially curtail employment.

Exactly such a charge was recently considered by the U.S. Court of Appeals for the District of Columbia in *Sindicato Puertorriqueno De Trabajadores* v. *James D. Hodgson, Secretary of Labor,* ——— F. 2nd—— (C.A. D.C. No. 24,057, July 21, 1971). In that case, the Court of Appeals overturned the refusal of an industry committee to increase the minimum wages in the Puerto Rican general agricultural industry above a range from 58 cents to $1.10 an hour. The court stated that the industry committee's conclusions were "devoid of a single (supporting) subsidiary finding."

Section 104(b)(1) seeks to correct the fault which the *Sindicato* decision exposed and is consistent with the rationale of that case. It would require the industry committees to recommend the appropriate minimum wage required of mainland employers in all cases in which the documentary evidence demonstrating that there would be substantial

curtailment of employment is lacking. This requirement will provide a spur to insure that the industry committees will be in a position to act rationally rather than arbitrarily.

Section 104(b)(2) of the bill provides that in any case in which a Court of Appeals concludes on review that the evidence required by section 104(b)(1) has not been produced before the industry committee, the Court may then order the employer to pay the applicable minimum wage required of U.S. mainland employers.

This provision also stems from the *Sindicato* decision of the Court of Appeals in which the court concluded that it was powerless to establish a higher minimum on its own. It therefore remanded the proceeding "to enable petitioner, if so advised, to obtain further consideration of the matter by an appropriate committee."

Thus, because of the remedial limitations of the Act, the employers while losing their legal point gained their practical objective—the right to pay the lower wage set by the industry committee. If this result were to be allowed to stand, only employers, who could seek to have the court reinstitute the prior wage order, would have an incentive to appeal. This would be inequitable and inconsistent with the basic notion that there should be an effective remedy for any substantial wrong.

The bill also provides for the establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1971 amendments (other than employees described in section 103 of the bill), including employees of the Government of Puerto Rico and political subdivisions thereof who are not now covered by the Act.

It provides further that, notwithstanding any other provision, no wage rate for covered employees may be less than 60 per centum of the minimum wage rate applicable to the same class of employees in the United States. This provision is effective January 1, 1972, and essentially represents a subminimum wage rate for employees in Puerto Rico and the Virgin Islands. It was included to prohibit the outrageously low wage rates presently applicable to some categories of employment, such as that applicable ($0.47 an hour) to hand-sewers of fabric gloves.

Federal, State, and Local Government Employees

Section 201 of the bill amends the definitions of "employer," "enterprise," and "enterprise engaged in commerce or in the production of goods for commerce," to include activities of the Government of the United States or of any State or political subdivision of a State; thereby extending minimum wage and overtime coverage to employees engaged in the activities of Federal, State, or local governments. The bill, however, establishes an overtime exemption applicable to "any employee of a State or political subdivision of a State engaged in fire protection or law enforcement activities." Therefore, police and firemen will not be subject to the overtime requirements of the Act.

Minimum wage coverage would be extended to an estimated 4.7 million public employees. More than 3.3 million public employees are presently covered by the Act.

In the case of public employees first covered by the 1971 amendments, and State and local government employees covered by the 1966

amendments, the bill would provide a minimum wage rate of not less than $1.80 an hour effective January 1, 1972, and not less than $2.00 an hour effective January 1, 1973. Federal employees covered by the 1966 amendments would be entitled to a minimum wage rate of not less than $2.00 an hour effective January 1, 1972,

The impact of a $2.00 an hour minimum wage rate on all such employees is illustrated in a preceding section, but it is significant to note here that there would be no impact with respect to Federal employees.

The Department of Labor evaluated the feasibility of extending minimum wage and overtime protection under the Act to nonsupervisory employees in State and local governments, and submitted its findings to the Congress earlier this year. The 1966 amendments extended coverage to public education and hospital institutions.

In a "Summary of Findings," the Department concluded that:

> The nationwide survey of State and local governments (excluding education and hospital institutions) indicates that wage levels for State and local government employees not covered by the FLSA are, on the average, substantially higher than those of workers already covered. Hence, if coverage under the FLSA is extended to these workers, comparable minimum wage and overtime standards would not have as great an impact as did the earlier extension of FLSA coverage to employees of State and local government schools, hospitals, and residential care establishments.

The Department estimates that fewer than 120,000 of the 3,077,000 State and local government employees to be covered by the bill would be benefitted by the impact of a $1.80 an hour minimum wage rate; and that 167,000 of that total would be benefitted by the impact of a $2.00 an hour minimum wage rate effective January 1, 1973.

In March 1970, the length of the average workweek for nonsupervisory employees in State and local governments was 38.1 hours. Nationwide, over three-fifths of the nonsupervisory employees worked 40 hours during the week surveyed by the Department, only a tenth worked over 40 hours.

The Department concluded:

> Long workweeks were most prevalent among employees in the public safety activity, which includes police and fire departments. A fifth of the public safety e nployees worked over 40 hours and they comprised half of the employees on long weekends. Public works was also significant in this regard, employing 27 percent of the workers on long weekends.
>
> During the survey week, only 2.3 percent of total nonsupervisory man-hours in State and local governments represented hours worked in excess of 40. If a 40-hour Federal overtime standard were in effect at the time of the survey, the premium pay required for these hours would have approximated one percent of the weekly wage bill. The actual impact of a 40-hour standard would have been less because a substantial proportion of the employees receive premium overtime pay.

This conclusion does not, of course, consider the overtime exemption contained in the bill for police and firemen. The actual impact on State and local governments then, of a 40-hour standard, will be virtually non-existent.

TRANSIT EMPLOYEES

Section 202 of the bill reduces and ultimately repeals the overtime exemption for any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency.

In determining the hours of employment of such an employee, hours employed in "charter activities" shall not be included if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment. It is to be emphasized that "charter activities" shall not include any such employment which the employee is assigned to perform or which he is otherwise required to perform as part of his regular work day or work week.

The repeal of the overtime exemption affects about 101,000 employees employed in transit operations.

Some testimony before the committee regarding the proposed repeal, tended to distinguish and isolate the local transit industry from all other components of American industry by suggesting special and unique problems such as report time, turn-in-time, meal period, and other similar types of time and work categories.

Such problems as piecework, on-call-time, meal periods, rest periods, and other pay practices of a special nature, have been considered and resolved successfully in many differing industries by administrative procedure. This procedure has led to the development of a body of law and regulations that, over the years, have won acceptance by the courts, and by the Congress, which has had an opportunity to review these practices whenever amendments to the Act have been considered.

One union in the industry has nearly 70,000 of the 101,000 employees organized. A review of the agreements discloses that 58,000 of those employees—or 85%—are covered by a 40-hour work week and, in many cases, an 8-hour work day. An additional 35,000 employees, members of another labor union, are also covered by a 40-hour workweek and an 8-hour workday. The problems of the 40-hour workweek pointed to by some segments of the industry then, have and are already being met and resolved by a substantial majority of the industry.

SUGAR EMPLOYEES

Section 204 of the bill would repeal the year-round overtime exemption in section 13(b) of the Act affecting employees processing sugar beets, sugar beet molasses, sugarcane, or maple sap into sugar (other than refined sugar) or syrup.

Because of the Sugar Act, which was recently extended for three years by Congress, the sugar industry is subsidized, government-controlled, and highly structured. Sugar production quotas are set by

the Federal government and it enforces them rigorously. Federal payments of more than $90 million a year are made annually to the industry. And foreign imports of sugar are specifically and tightly controlled and restricted. Other legislation protects the industry from crop damage, storm damage, freezes, etc.

The committee found that government protection abounds in this industry—except for the workers. Most of them live in poverty. The employees affected by the exemption earn the minimum wage or slightly more. They have jobs only a part of the year. When most of these processing workers do have employment in the sugar industry, they generally work 12 hours a day for seven days a week, but they are denied time and one-half rates of pay for overtime.

The committee found the exemption to abound with still other inconsistencies. For example, although sugar refineries also work extended hours and some firms actually operate combined raw mills and refineries, the former is totally exempted from the 40 hour standard and the latter completely covered by it. Also, the exemption exists year-round, yet it is used only for seven or eight weeks in some areas and 12 or 13 weeks in others. The exemption has sometimes been claimed as the protection of the small businessman, yet an overwhelming number of the employees affected work for parts or subsidiaries of large corporations.

The repeal of the exemption would affect about 30,000 employees—the maximum employment during peak season.

Seasonal Industry Employees

Section 205 of the bill would gradually phase out the overtime exemptions provided in section 7(c) and 7(d) of the Act for certain industries which are seasonal in nature and certain other industries which also perform certain first marketing, first processing, handling, packing, storing, preparing or canning operations on perishable agricultural and horticultural commodities in their raw or natural state.

This action by the committee is in keeping with the declared intention of Congress in 1966 and the recommendation of George P. Shultz, then Secretary of Labor, in 1970.

The Conference Report on the Fair Labor Standards Act Amendments of 1966 told of the forthcoming repeal of these exemptions. In it, the conferees of the House of Representatives and the Senate wrote:

> It was the declared intention of the conferees to give notice that the days of overtime exemptions for employees in the agricultural processing industry are rapidly drawing to a close, because advances in technology are making the continuation of such exemption unjustifiable.

Because of this Congressional action, the Labor Department, under Secretary Shultz, undertook a lengthy and detailed study of these and other agricultural processing exemptions. The Secretary sent to Congress a report in January 1970, consisting of two volumes with 675 pages of data and findings. The Secretary urged Congress in his "Findings and Recommendations:"

> The survey findings clearly indicate that consideration should be given to the phasing out of the overtime exemptions currently available to the agricultural handling and process-

> ing industries * * *. The favored position held for three decades by agricultural handlers and processors because of full and partial exemption from the 40 hour weekly overtime standard applicable to most industries covered by the FLSA needs reexamination.

Secretary Shultz then gave reasons for his phase-out conclusion. They include: The exemptions are not fully used. Many affected establishments demonstrate the feasibility of the 40 hour week by paying time and one-half rates for overtime hours now. Some industires using the 20 weeks of exemptions are less seasonal than those using only the 14 weeks. The universal 40 hour standard would remove intra-industry inequities. The use of second and third shifts could be increased. And technological, marketing, and other advances have lengthened the processing period, extended storage life of perishable products, and permitted processors to exercise more precise control.

The last reason given by Secretary Shultz for his conclusion is especially interesting and important:

> There was a sharp drop in man-hours over 40 a week during the periods the exemptions were most likely to be claimed. The drop in man-hours over 40 a week generally occurred before the expiration of the exemption period. Thus, over the exemption period presently provided—14 weeks or 20 weeks—the exemptions declined in importance to handlers and processors as man-hours over 40 a week diminished. This indicates that a gradual annual cut back in the length of the exemption period would provide for orderly adjustment to the standard applied in other industries 30 years ago.

The committee was urged by various witnesses to repeal the exemptions immediately. They argued that Secretary Shultz' phase-out recommendations will already be two years old by the time the 1971 amendments go into effect. They pointed to the low wages and income of processing workers and the high unemployment rate among rural workers. Repealing the exemption would ameliorate both problems, they said, by providing some overtime pay and by increasing the number of workers hired. Using the statistics of the Labor Department study, they calculated that the requirement of time and one-half rates after 40 hours would increase the annual payroll of the largest industry listed in the report by only 1.9 percent, or about 5.34 cents an hour. Despite this and other evidence showing sharp rises in industry productivity, the committee believed that a three-year phase-out of this exemption was more desirable than immediate repeal because it assured a more proper and smoother preparation for the 40 hour week. However, it is the opinion of the committee that throughout the phase-out period, the exemption should be strictly limited to those agricultural commodities which meet the requirements of the statute.

The committee has also heard complaints against the phase-out of the exemptions. However, the committee is not unmindful that when it sharply cut back the overtime exemptions in the 1966 amendments, similar—in fact, sometimes the same—arguments against the action were heard then as now. Yet, not a single instance of harm caused by the 1966 exemption cutback has been brought to the committee's attention.

DOMESTIC SERVICE EMPLOYEES EMPLOYED IN HOUSEHOLDS

Section 206(a) of the bill contains the following congressional findings:

> The Congress finds that the employment of persons in domestic service in households directly affects commerce because the provision of domestic services affects the employment opportunities of members of households and their purchasing activities. The minimum wage and overtime protection of the Fair Labor Standards Act of 1938 should have been available to such persons since its enactment. It is the purpose of the amendments made by subsection (b) of this section to assure that such persons will be afforded such protection.

Subsection (b) provides a minimum wage rate for such employees of not less than $1.80 an hour effective January 1, 1972, and not less than $2.00 an hour effective January 1, 1973. These rates would be applicable to a domestic service employee unless "such employee's compensation for such service would not, as determined by the Secretary, constitute 'wages' under section 209 of the Social Security Act." Subsection (b) also applies the overtime requirements of the Act to such employees.

The bill exempts from both the minimum wage and overtime requirements, however, "any employee who is employed in domestic service in a household and who resides in such household."

The bill would extend coverage to an estimated 1,139,000 employees employed in domestic service, out of a total of 2,125,000 such employees. About 1.1 million of those proposed to be covered currently earn less than $1.80 an hour. Slightly more than that number earn less than $2.00 an hour.

The committee expects that extending minimum wage and overtime protection to domestic workers will not only raise the wages of these workers but will improve the sorry image of household employment. The committee is convinced that the sharp decline in household employment over the last decade reflects not only the prevalence of low wages and long hours but the widespread conviction that these are dead-end jobs. Including domestic workers under the protection of the Act should help to raise the status and dignity of this work.

YOUTH UNEMPLOYMENT

The committee considered and rejected the idea that the Fair Labor Standards Act should incorporate a special subminimum rate for youth. The rejection was based not only on the fact that this would violate the basic objective of the Act, but was made with the conviction that such a standard would contribute to rather than ease the critical problem of unemployment, including unemployment of youths and minority groups.

The committee recognizes that the Fair Labor Standards Act enacted 33 years ago had as its stated objective the elimination of "living conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers."

Its basic purpose has been and continues to be the raising of wages of that small proportion of employees at the bottom of the wage scale

who are in no position to bargain for themselves. It is not a substitute for collective bargaining or the operation of the free labor market. It protects the fair employer from unfair competition from chiseling employers. The minimum wage set under the Fair Labor Standards Act is not an average wage. It is the "lowest" wage which may be paid employees in activities covered by the Act It is paid to the unskilled, untrained, inexperienced worker who frequently is young or black or a woman.

Except for those years in which it was increased (and not always in those) the minimum wage was always less than half the average wage in manufacturing.

The minimum wage rate, not unlike the occupational wage rate, is a wage for a job—not for the age or sex or color of the person doing the job. That is the way we view wage-setting in this country.

Those who would recommend imposing or retaining a subminimum wage as a solution to the unemployment problem appear to have serious misconceptions about the minimum wage and, in fact, about the role of wages in general.

There is no evidence to support the idea that low wages create jobs. Actually, what evidence there is points in the opposite direction. Putting money in the hands of low-wage workers is the most direct way of creating purchasing power—high-velocity dollars—and hence additional jobs.

To imply that employers would hire workers whom they didn't really need because wages are low not only ignores the whole concept of business-for-profit but also omits from consideration all the other labor-cost factors, such as employment, recruiting, supervision, social security, workmen's compensation, unemployment insurance, pension plans, hospitalization, medical plans—all of which must be considered when new jobs are created.

Not only is it clear that a subminimum wage is not the solution to the teenage unemployment problem, there is considerable doubt as to whether the problem being discussed is really the problem of teenage unemployment or whether color is the major obstacle to obtaining and retaining jobs.

A few figures will help to show that the color problem overshadows the age problem.

In 1970, there were more than 6 million employed teenagers aged 16 to 19. This was 360,000 more than in 1968, and 2 million more than in 1960. Teenagers held almost 8% of all jobs in 1970 as compared with 6% in 1960. The single most important reason for the relatively high unemployment rate for teenagers is the dramatic 41% increase in the teenage population during the decade of the 60's.

As far as teenagers are concerned, the decade of the 70's should ease the problem. In contrast to a 41% population growth of teenagers in the 60's, a modest 12% is the outlook of the 70's.

Actually, the rate of teenage unemployment was higher in 1961, 1963, and 1964 than in 1970. Also, the teenage unemployment rate vis-a-vis the adult rate (20 and over) was better in 1970 than in any year since 1965.

While overall employment of teenagers was significantly higher in 1969 than in 1968 and slightly higher in 1970 than in 1968, nonwhite teenagers lost jobs between 1968 and 1970. Between 1969 and 1970, there was a 1% increase in white teenage employment but a 6% drop in nonwhite teenage employment.

In 1970, the unemployment rate for nonwhite teenagers was 29.1%; for white teenagers, 13.5%. For nonwhite adults (20–24) the rate was 13.7%. Obviously color is more significant than age.

The committee was particularly struck by the fact that the unemployment rate for *nonwhite high school graduates* (age 16 to 24) was 34.3% as compared with 22.1% for *white high school dropouts*.

Even these few figures convinced the committee that combining unemployment statistics for nonwhite and white teenagers and labelling the result a teenage problem, tended to disguise the real problem facing us today. And that is discrimination in employment because of color.

In rejecting the concept of a subminimum wage rate based on age, the committee was impressed by the findings in the study "Youth Unemployment and Minimum Wages" Bulletin 1657. This report, prepared by the Department of Labor in 1970, is a comprehensive report on the relationship between minimum wages and youth unemployment. The report states that the various studies failed to establish any relationship between youth unemployment and the minimum wage. To quote some of the major findings in this report:

> In general, the most important factor explaining changes in teenage employment and unemployment has been general business conditions as measured by adult unemployment rate.
>
> Not one of the local offices of the Employment Service (ES) cited the recent hike in the minimum wage or the extension of coverage under the Federal Fair Labor Standards Act as responsible for the change between June 1966 and June 1969 in the total number of nonfarm job openings available to teenagers, or which specified a minimum age of 16–19 years of age or 20 years old or over.
>
> In nearly all of the States covered by the study, differential minimum wage rates applicable to youth, including exemptions, appear to have little impact on the employment of youth in 1969.
>
> On the basis of our examination (with respect to foreign experience) however, it appears reasonable to conclude that wage differentials are less important factors than rapid economic growth, structural and technological shifts, national full employment, relatively low mobility rates, and the relative shortage of young workers. A similar confluence of these factors in the American economy might well have similar effects on youth employment regardless of the wage structure.

The committee is interested in all programs which will stimulate the economy and generate additional jobs for all the unemployed. It is opposed to a youth wage or a black wage or any other such arbitrary subminimum wage under the Fair Labor Standards Act.

Employment of Students

As a sequel to the discussion of the need for and the probable effects of a subminimum wage for youth, the peripheral question of special wage rates for full-time students was examined.

The legislative history of section 14(b) and 14(c) of the Act was studied to determine the Congressional intent in establishing special rates for students.

The Act currently permits the employment of full-time students on a part-time basis (or full-time during vacations and holidays) in retail and service establishments and in agriculture under special certificates issued pursuant to regulations of the Secretary of Labor at a wage rate not less than 85 percent of the applicable minimum wage. These certificates are issued to the extent necessary in order to prevent curtailment of opportunities for employment.

Prior to the 1961 amendments to the Act, there were no provisions relating to the employment of full-time students at subminimum rates. In revising section 14 of the Act to include full-time students, the Committee on Education and Labor sought, through the issuance of certificates, to provide an incentive for employers to hire students while providing assurances that adult workers would not be adversely affected.

This consideration was clearly spelled out in the report accompanying H.R. 3935 (H. Rept. No. 75, 87th Congress, 1st Session, March 13, 1961, p. 11):

> The purpose of this provision is to provide employment opportunities for students who desire to work part-time outside of their school hours without displacement of adult workers.

The 1966 amendments to the Act further revised section 14 with respect to full-time students in retail and service establishments and added a provision for students in agriculture.

The report accompanying H.R. 13712 (H. Rept. No. 1366, 89th Congress, 2nd Session, March 29, 1966) explained that the full-time student certificates were to be issued to "students regardless of age (but in compliance with the applicable child labor laws)", and repeated the basic objectives of these provisions—to provide employment opportunities for students outside of school hours without displacement of adult workers.

The committee agrees with the statements expressed in the 1961 and 1966 reports and proposes in the bill to expand the scope of section 14 of the Act in order that more occupations not determined to be "particularly hazardous" may be available as employment opportunities for students. The committee bill, however, maintains a certification procedure to insure that students will not be used to displace job opportunities for other workers.

The committee is emphatic in urging the Secretary to be diligent and attentive to his certification responsibilities. The procedure is not to be observed in its breach. Special certificates for the employment of a student by an employer, are not to be issued by the Secretary unless he is satisfied that the employment of any such student will not "create a substantial probability of reducing the full-time employment opportunities" of other workers.

Section 208 of the bill also provides that the Secretary may (by regulation or order) waive the minimum wage and overtime provisions of the Act with respect to a student employed by his elementary or secondary school, where such employment constitutes an integral part of the regular educational program provided by the school.

The committee urges the Secretary to be diligent in determining that the employment is in fact an integral part of the regular education program and that this provision is not used to circumvent the requirements of the statute.

Laundry and Cleaning Establishments

Section 210 of the bill requires the consideration of establishments engaged in laundering, cleaning, or repairing clothing or fabrics as service establishments in the administration of sections 7(i) (relating to commission employees) and 13(a)(1) (relating to executives and administrative personnel and outside salesmen) of the Act.

The committee does not intend that such establishments be considered service establishments in the administration of sections of the Act beyond those specified, but clearly intends that they be subject to the same rules and regulations applicable to service establishments pursuant to those sections.

This issue essentially involves the exemption of employees of such establishments from the overtime provisions of the Act when they qualify as commission salesmen, the exemption of employees of such establishments from the minimum wage and overtime provisions when they qualify as outside salesmen, and the ability of such employees to perform "non-exempt" work in amounts applicable to other employees of service establishments.

In this connection, it should be clearly understood that the scope of section 210 of the bill covering laundry and dry cleaning establishments includes wholesale dry cleaning establishments. The committee expressed concern over a clear misunderstanding with respect to representations made by the Department of Labor to it and to the Congress during consideration of the 1966 amendments to the Fair Labor Standards Act with respect to the status of wholesale dry cleaning driver salesmen thereunder. It was at that time represented to the committee and to the Congress that the driver salesmen in the wholesale dry cleaning industry would remain exempt under the section 13(a)(1) exemption covering outside salesmen, but it appears that the administration of the 1966 amendments has not been consistent with those representations. See in this connection 112 Congressional Record, Part 9, at pages 11082 through 11084. The word "establishments", as used in section 210 of the bill, includes the wholesale establishments to which reference was made in the 1966 exchange with the result that the driver salesmen within the wholesale dry cleaning industry will clearly be within the exemption provided by section 13(a)(1) and of section 7(i) if they otherwise qualify for such exemption.

Maids and Custodial Employees of Hotels and Motels

Section 211 of the bill extends the overtime coverage of the Act to maids and custodial employees of hotels and motels.

The committee intends that a "custodial" employee be one who guards and protects or maintains the premises, or the hotel or motel facility, in which he is employed. This would include an employee who performs janitorial functions, who keeps the facility clean, who tends the heating system, makes minor repairs, and the like. It would also include employees of the facility engaged in activities incidental to the operation of the hotel or motel, such as maids and custodial

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employees in the facility's beauty or barber shops, valet, restaurant, and the like. Overtime protection then, would be afforded to those who have heavy duties such as laying carpets and rugs and arranging furniture and to those who have light duties such as making beds, dusting furniture, and replenishing linens.

CONGLOMERATES

Section 212 of the bill precludes the availability of the minimum wage and overtime exemptions of section 13 of the Act (with certain exceptions) to conglomerates, as defined by the bill.

The committee recognizes the multi-economic advantages associated with a conglomerate-type of business enterprise. Advantages of substantial working capital, the velocity of working capital, purchasing power, tax write-off considerations, the ability to sustain protracted losses in one phase of the enterprise, and others, come immediately to mind. The committee believes these advantages permit conglomerates to operate in unfair competition with single-business oriented activities.

The Fair Labor Standards Act has traditionally permitted the exclusion of "mom and pop" establishments from its requirements, in recognition of the social and economic merits of not aggravating a competitive, free enterprise market. But the last several years have witnessed the advent of the conglomerate; the multi-business oriented, all encompassing mode of operation. Because of the construction of the Act, and its various exemptions, business activities with gross annual sales in the hundreds of millions of dollars have enjoyed relief from its provisions on an equal footing with individual competitive establishments which are, in fact, small—and for whom the advantages of bigness do not apply.

The committee bill proposes to preclude such activities from the exemptions contained in the Act, by denying them to conglomerates whose annual gross volume of sales made or business done exceeds $5,000,000.

The activities of one conglomerate active in agriculture are deserving of mention at this point, in order that the committee's contention and action may be clear and understandable. The information was largely derived from a series of articles on the subject which appeared in the Congressional Record. The name of the conglomerate is not important but its activities symbolize an agricultural revolution that may reshape beyond recognition the Nation's food supply system. It is like dozens of the largest corporations with non-agricultural names that have diversified into agriculture. And it serves as a useful illustration.

This particular concern is that the new breed of conglomerate farmers do not merely grow crops or raise cattle. They think in terms of "food supply systems," in which they own or control production, processing, and marketing of food.

One conglomerate reported to its stockholders, ". . . (our) goal in agriculture is integration from seedling to supermarket." Its resources to achieve that goal include 1970 sales of $2.5 billion, profits of $324 million, and assets of $4.3 billion in such fields as oil production, shipbuilding, and manufacturing.

The conglomerate invasion of agriculture comes at a time when millions of farmers and farm workers have already been displaced, contributing to the problems of rural wastelands and congested cities.

More than 100,000 farmers a year are quitting the land, and more than 1.5 million of those who remain are earning less than poverty-level farm incomes.

Although the U.S. Census counts 2.9 million farmers, 50,000 grow one-third of the Nation's food supply and 200,000 produce more than one-half of all food. The concentration of production is especially pronounced in such crops as fruit, vegetables, and cotton.

In 1965, 3,400 cotton growers accounted for 34 percent of sales, 2,500 fruit growers had 46 percent of sales, and 1,600 vegetable growers had 61 percent of the market.

The medium to large-size "family farms"—annual sales of $20,000 to $500,000—survived earlier industrial and scientific revolutions in agriculture. They now face a financial revolution in which traditional functions of the food supply system are being reordered, combined, and coordinated by corporate giants.

The new corporate farmers account for only 7 per cent of total food production, but they have made significant inroads in certain areas. Twenty large corporations now control poultry production. A dozen oil companies have invested in cattle feeding. Only three corporations dominate California lettuce production. The family farmer is still obvious only in growing corn, wheat, and other grains; but even here constantly larger acreage, machinery, credit, and higher prices are necessary for the family farmer to stay profitably in business.

Even the largest independent farmers question their ability to compete with a corporation which can, at least in theory, own or control virtually every phase of a food supply system. One large conglomerate can plant its own vast acreage. It can plow those fields with its own tractors, which can be fueled with its own oil. It can spray its crops with its own pesticides and utilize its own food additives. It can then process its food products in its own plants, package them in its own containers, and distribute them to grocery stores through its own marketing system.

Financing the entire operation are the resources of a conglomerate with billions in assets, hundreds of millions in tax-free oil income, and interests in banking and insurance companies. The conglomerate, according to reports filed with the Securities and Exchange Commission, had 1969 gross income of $464 million and taxable income of $88.7 million. Yet, due to Federal tax considerations, the conglomerate not only paid no taxes on that income, but enjoyed a tax credit of $13.3 million.

The type of food system being assembled by this and other conglomerates is of legitimate concern to independent farmers, who see every element of the food business acquiring market power unto themselves. On one side, they confront the buying power of giant food chains. Now they must compete with conglomerates that can take profits either from production, processing, or marketing. The individual farmer usually does not have such options. The giant competitors also benefit most from a variety of government subsidies on water, crops, and income taxes.

It is significant that, contrary to popular belief, the conglomerate operation does not generally grow food more inexpensively than the individual farmer. Numerous Department of Agriculture and university studies demonstrate that enormous acreage is not necessary to farm efficiency.

For example, maximum cost-saving production efficiency is generally reached at about 1,500 acres for cotton, less than 1,000 acres for corn and wheat, and 110 acres for peaches. In fact, studies show that the largest growers incur higher farm production costs as they employ more workers and layers of administration.

But conglomerates have the marketing power to make or break the market. They can sell below cost, as a loss leader, to secure other business, and sustain losses that no farmer can afford.

The Nation's fruit and vegetable growers are no strangers to the spirited competition of agribusiness. They have wrestled with the market power of chain stores and major food processors for years.

The conglomerate, however, represents a different kind of competition. The older agribusiness corporations are primarily food companies and must profit somewhere in the food distribution system. Such is not necessarily the case with the new conglomerate farmers, for whom millions of dollars of agribusiness investment may represent only a fraction of total holdings. Only 4 percent, for instance, of the previously mentioned conglomerate's sales are from agriculture.

In fact, the conglomerates may find their food investments profitable even without earning anything from them. The profits may be a derivative of land speculation, Federal crop subsidies, or Federal tax law. The aforementioned conglomerate received almost $1 million in 1970 cotton and sugar farm subsidies.

The conglomerates also utilize a variety of Federal tax provisions that permit them to benefit from tax-loss farming and then profit again by taking capital gains from land sales. Here again, the aforementioned conglomerate is now developing six new California suburban communities on former farm land.

Other farmers, now removed from the conglomerate farmer phenomenon, fear the activity may soon encompass them.

Midwestern cattle and hog feeders—who now enjoy a satisfactory income from the business—are aware of the pattern in which independent poultry growers were virtually eliminated.

About 20 corporations, including several conglomerates, originally entered poultry production as a means of developing markets for their feed. Farmers were enlisted to grow the agribusiness poultry, using their feed.

According to Department of Agriculture studies, the poor but once independent poultry farmers are still poor as contract workers, earning about 54 cents an hour. A task force on agriculture called this corporate farm system "poultry peonage."

The committee believes this discussion—exclusively with respect to conglomerates in agriculture—serves to highlight a problem which is critical in nature, and justifies the inclusion of a conglomerate provision in the bill. This committee is aware that this type of activity is not unique to agriculture, but exists in a variety of industry categories. The bill would be equally applicable to all.

The committee's competence and jurisdiction in this area extends only to its responsibility for the Fair Labor Standards Act; but it is with respect to that Act, that the committee judgment is consistent in its support of the continued exemption of "small business" and the inclusion thereof of enterprises demonstrably capable of paying to their employees not less than the minimum wage rate and overtime compensation.

Illegal Aliens

The impact upon labor standards of the "illegal alien"—the person who enters the United States unlawfully and finds work here, or the person who enters the country lawfully and then violates the conditions of his admission with respect to employment, has long concerned the committee, and recent headlines have only shed new light on an old and growing problem.

According to one Immigration and Naturalization official, there may be 1,500,000 job-holding illegal aliens in the United States today—and as bad as this would be in a period of labor scarcity, it is wholly inadmissable in a period of great and growing unemployment.

No doubt many of the aliens who are illegally present, and who have jobs, have succeeded in concealing their status from their employers. Such cases, of course, are covered in large extent by the immigration statutes, over which the committee has no jurisdiction. When such an illegal alien is apprehended, he can be deported, or subjected to the other penalties of the Immigration Code. But in a great many cases, the employer and the illegal alien closely collaborate in a venture in which the risks and the prospective profits are quite unequally shared.

To be more specific, the knowing employer of illegal alien labor stands to gain in terms of not having to pay standard wages or fringe benefits, while he risks absolutely nothing! If the illegal alien himself should discover that he is being cheated, the first murmur of a complaint from him can bring about a visit from the Immigration Service, and a quick trip to the border, while the employer loses nothing except the time it takes him to find the next illegal alien.

The committee's provision with respect to illegal aliens, which adds to the criminal penalties already found in the Act for other violations, a criminal penalty for the knowing employment of an illegal alien, seeks only to equalize the risk, so that employers may find less incentive to employ illegals, and less opportunity to use such employment as a way around the laws the Congress has enacted to protect labor standards.

Section 214 of the bill adds another disincentive to the employment of illegals by providing that government contracts subject to the customary prevailing wage and safe and healthful working conditions clauses of the Davis-Bacon, Walsh-Healey, and McNamara-O'Hara Acts, must also contain assurances that illegal aliens will not be employed on the contract work. This provision does not add a new offense to the list of criminal acts, but it does provide for contract cancellation and the other penalties of the relevant Act as an additional possible penalty.

Finally, the third subsection of the illegal alien provision limits the right of the Secretary or the Attorney-General to make blanket, "class" exemptions to this part of the Act. Without eliminating any existing right to make exceptions or exemptions, by rule and regulation, it does provide that as far as this provision is concerned, each exemption must be granted on its own individual merits, and exemptions may not be granted for entire industries, communities, or seasons. The committee does not intend that the ban on the employment of illegals or the punishment for such employment should be waived simply because in the past it may have been the custom to look

the other way in particular cases. In times of high unemployment the committee is certainly not persuaded that there are any jobs so plentiful that legal residents cannot be found to take them.

Relief for Domestic Institutions and Employees Injured by Increased Imports From Low-Wage Areas

Title III of the bill amends section 2 of the Act (Finding and Declaration of Policy) to include the recognition by the Congress that the unregulated importation of goods produced by industries in foreign nations under labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

Also declares it to be the policy of the Act through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to provide for the regulation of imports of goods in such manner as will correct and as rapidly as possible eliminate any serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States and the economic welfare of the communities in which they are employed from conditions above referred to in the industries providing them employment in which increased imports are a substantially contributing factor.

Amends section 4 of the Act to implement the policy declared by the above amendments to section 2 of the Act. Upon the request of the President, or upon resolution of either House of Congress, or upon application of the representative of any employee organization in a domestic industry, or upon application of any interested party, or upon his own motion, the Secretary of Labor shall promptly make an investigation and make a report thereon not later than 4 months after the application is made to determine whether any product is being imported into the United States under such circumstances, due in whole or in part to the fact that such foreign goods were produced under conditions such as the detrimental labor conditions referred to above, which are causing or substantially contributing to serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States or to the economic welfare of the community in which any such group of workers are employed. In the course of any such investigation the Secretary or his delegate shall hold hearings. Should the Secretary find that an imported product is or likely will be sold in competition with like or competitive goods produced in the United States under such circumstances, he shall promptly report his finding to that effect to the President. Upon receipt of the Secretary's report, the President shall take such action as he deems appropriate to remove such impairment or threat of impairment, in addition to any other customs treatment provided by law.

It is the purpose of the provision to establish a procedure whereby the Secretary of Labor would investigate to determine if a particular product or related group of products is being imported into the United States under such circumstances as to undermine the public policy expressed in the Fair Labor Standards Act by impairing or threatening to impair seriously the health, efficiency, and general well-being of "any group of workers in the United States or * * * the economic welfare of the community in which any such group of workers are employed." The Secretary would undertake his investigation upon the request of the President, or upon resolution of either House of Congress, or upon application of the representative of any employee organization in a domestic industry, or upon application of any interested party, including any community organization (such as a town, township, city, or county), or upon his own motion.

The Secretary would determine whether the impairment or threat of impairment—if such exists—is in some degree caused by imported goods produced under conditions such as those condemned in section 2(a) of the Act. These conditions, which it is the public policy of the United States to outlaw in domestic commerce, as clearly stated in the act, include all conditions detrimental to workers which (1) cause commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate substandard labor conditions among the workers of the several States; (2) burden commerce and the free flow of goods in commerce; (3) constitute an unfair method of competition in commerce; (4) lead to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interfere with the orderly and fair marketing of goods in commerce.

The provision provides that the Secretary shall make a report on the investigation not later than 4 months after it is requested. Should he find that an imported product is being produced under the circumstances referred to, and is or likely will be sold in competition with like or competitive goods produced in the United States, he shall report his findings to that effect to the President. The findings would also be made public.

The President thereupon, would "take such action as he deems appropriate to remove such impairment or threat of impairment, in addition to any other customs treatment provided by law." The form and nature of the action are left somewhat to his discretion. The bill only requires that the action be customs action which in addition to other (i.e., existing) customs treatment would "remove such impairment or threat of impairment". The committee anticipates any such action, however, to have the intended effect of relieving the economic pressure from excessive imports on the jobs and communities in question. It is emphasized that such action will be applied to the offending imports in the form of increased duties or quantitative limitations, and will not in any direct way be addressed to jobs or communities.

Prior to that, and upon proper application, the Secretary of Labor would undertake the investigation with a focus upon the actual effect of the imports in question upon domestic working conditions, standards of living, and job opportunities, which he is regularly required to keep under surveillance as part of his official duties. Both labor and the communities in which the affected workers live would thereby have the member of the President's Cabinet most interested in their welfare look into a situation in which imports are believed to be threatening the jobs or economic security of the workers or communities.

Although the procedures established by the bill primarily exist for the utilization of workers and communities, it is important to also recognize they may be invoked by the President, either House of Congress, upon the Secretary's own motion, or by any "interested party." In this regard, the committee intends that an "interested party" reflect some substantial public interest. For example, an employer may properly request an investigation if he represents a significant proportion of the output of his sector of manufacturing, agriculture, or other productive activity. A community may do so by resolution of council, action of head of government, or authorized action of the governing body or head of any community organization which broadly reflects the interests of citizens in the community. Of course, the representative of any employee organization may also properly request an investigation.

A provision regarding the importation of foreign goods is not new to the Fair Labor Standards Act. Section 4(e) of the act now states:

> (e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

Section 2(b) clearly declares the general policy of the Act "through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions" detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and the general well-being of the Nation's workers.

Domestically, the Congress exercised its power to regulate commerce so as to enforce the protections of the Act by making it a crime for persons to ship in interstate commerce the products manufactured by labor being paid less than the minimum wage or required to work more than the maximum number of hours without overtime compensation.

The Congress, however, never fulfilled the basic declaration by providing any remedies which would prevent the protections of the Act from being dissipated by the injurious impact of excessive imports of products produced abroad under conditions below the standards specified in the act.

Responding to President Roosevelt's message requesting fair labor standards legislation in 1937, the committee reported a bill and recognized the necessity for regulating imports in a manner consistent with the objectives of the legislation. In House Report No. 1452 (corrected print), 75th Congress, first session, the committee described an amendment to provide for the regulation of imports produced under substandard labor conditions whose sale in the United States would tend to defeat the purposes of the act. The report declared:

Section 8(c) and (4) are new tariff provisions proposed as a committee amendment. These provisions authorized the President, after investigation by the Tariff Commission, and upon the recommendation of the Commission, to make such increases in the duty, or to impose such limitations on the quantity permitted entry (or entry without duty increase), as may be necessary in order to equalize differences in the costs of production of any domestic article and of any like or similar foreign article resulting from the operation of the Labor Standards Act and in order to maintain the standards established pursuant to the act. In case of any article on the free list of the Tariff Act of 1930, possible action is limited to import quotas.

The provisions are so drawn that remedial action is possible with respect to any item, whether or not it is included in any trade agreement, present or future. With respect to a trade agreement item, however, possible action is limited to import quotas, since any increase in the duty on such an item would be in violation of the trade agreement. Section 8(d) contains the specific provision that "Nothing in this section shall be construed as permitting action in violation of any international obligations of the United States." Section 8(d) further provides in the case of quotas that the quantities permitted entry, or entry without an increase in duty, shall be allocated to the supplying countries on the basis of the proportion of imports from each such country in a previous representative period. This provision is designed to assure against the discriminatory allocation of such quotas contrary to the letter and spirit of our existing international obligations and policies.

The committee's amendment to the fair labor standards bill was consistent with President Roosevelt's message recommending the enactment of such legislation, in which he stated (H. Doc. 255, 75th Cong., first sess.):

> And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of the interstate trade.

That first fair labor standards bill was recommitted later in the second session of the 75th Congress.

While these events were taking place in the House, the Senate Committee on Education and Labor also reported a fair labor standards bill. That committee also formed the judgment the original bill should be amended to provide for the regulation of imports in a manner consistent with objectives of the act.

The Senate passed the bill as reported by the committee containing the import adjustment provisions. The Senate version of the bill was not enacted into law, however, and in the following session of the Congress the version of the fair labor standards bill which was enacted contained no import provisions.

It is significant that both the House and Senate Education and Labor Committees recognized the logical consequences of the law establishing minimum wages and maximum hours. Both committees desired to achieve evenhanded justice between domestic and foreign producers so that the low manufacturing costs stemming from low wages and long hours of work, which were forbidden to domestic producers, would not be available to their foreign competitors without some type of competitive equalization between domestic and foreign producers selling in the U.S. market. Both committees obviously realized that excessive imports produced abroad with a cost advantage of lower wages and longer working periods without the necessity for paying overtime compensation could unfairly displace the sale of American products and thereby detrimentally affect employment in the United States.

In addition to the foregoing, there is other legislative precedent for completing the regulation of foreign commerce and the flow of foreign produced goods in interstate commerce which the Fair Labor Standards Act has always had as its intended scope. It is provided by the National Industrial Recovery Act of 1933, which established conditions of fair competition under which domestic producers were obliged to limit the hours of work, pay a minimum wage, and sell their products at a price not incompatible with the public interest.

During Senate consideration of that act the Committee on Finance added a provision intended to prevent impairment by excessive imports of the objectives of the act. The purpose of the provision was described by that committee as follows:

> * * * upon complaint to the President that articles are being imported into the United States to the detriment of any industry with respect to which a code of fair competition is in effect, resulting in unfair methods of competition in the United States, the President may cause an investigation to be made. If after public notice and hearing the existence of unfair methods of competition shall be found, the President may exclude the articles concerned from entry into the United States, and the decision of the President is to be conclusive. The refusal of entry is to continue until the President finds that the conditions which led to the refusal no longer exist (S. Rept. 114, p. 2, 1933).

The committee amendment was further amended during action on the bill by the Senate. As amended, the provision became law. In lieu of the power of the President to exclude entirely articles found to be imported to the detriment of the fair competition codes provided for under the act, this provision of the law empowered the President to permit entry of the offending imports into the United States:

> Only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under [the act].

Here again, the Congress recognized, in fair labor standards legislation, that the social gains for American workers could be eroded

without procedural machinery to complement the system for regulation of domestic commerce, by comparable attention to the harmful effects of the movement of foreign goods produced under substandard wage and hour or other labor conditions.

The enactment by the United States of a wage and hour law does not, of course, affect the policy of other governments concerning the wage and hour standards prevailing in their countries. It is simply not possible to subject producers of imported goods to the same penalties imposed by the law in regard to offending domestic producers. Yet, if the production of goods imported into the United States does not carry generally cost burdens equivalent to that imposed on domestic producers by our wage, hour, and other labor standards, the channels of interstate commerce can be substantially preempted by imported goods to the serious detriment of domestic employment and the standards of living of workers, and the welfare of the communities in which workers displaced by imports reside.

This dilemma was clearly recognized during debate on the National Industrial Recovery Act. Senator Reed, of Missouri, put it succinctly when he said:

> We cannot compel the foreigner to unionize labor. We cannot compel the foreigner to pay minimum rates of wages. We cannot compel the foreigner to cut down his workday to 30 hours a week. We cannot compel him to join a code of fair competition. The effect of the bill, without some such protection as this, would be to hand over to the foreigners the entire American market. (Congressional Record, June 8, 1933, p. 5292.)

Title III of the bill is consistent with this approach and fills a void left since the Fair Labor Standards Act was originally enacted. It provides a specific procedure for investigation to identify sectors of employment and communities whose welfare and standards of living are being impaired or threatened with impairment by excessive imports of goods produced abroad under substandard labor conditions. It wills the President to remove by import regulation the detriment found by the Secretary of Labor to be a cause or threat to the maintenance of the minimum standard of living necessary for the health, efficiency, and general well-being of the affected workers.

Existing law regarding relief from import damage, in practical terms, has provided no relief to domestic workers and, further, offers no direct recourse to communities. Prior to 1962, an escape clause provision in tariff legislation provided that if, as a result of a tariff reduction or trade concession to another country, imports increased sufficiently to cause or threaten serious injury to a domestic industry, the Tariff Commission could—on its own motion or upon application from such industry—undertake an investigation, hold hearings, and make its findings and recommendations known to the President. The President thereupon could accept or reject the recommendations.

The Trade Expansion Act of 1962, however, repealed the existing escape clause procedure. It was replaced by a provision for "adjustment assistance," whereby adversely affected entities could make application to the Tariff Commission for financial assistance. Since 1962, few domestic industries or labor groups have been able to qualify for assistance under the provisions of this new remedy. The Tariff Commission has considered 120 petitions for relief and affirmed only 17.

A form of tariff adjustment provision was retained in the act for possible assistance to domestic industries as an alternative to economic adjustment assistance for firms, but was subject to the same conditions as adjustment assistance. The requirements are to the effect that a concession granted, such as a duty reduction, was the major cause of an increase in imports and, further, that the increase in imports was the major cause of injury which the complainant claims has taken place. An applicant for relief must prove both points. The result has been much the same as that under the adjustment assistance provision. Twenty-one petitions for relief have been considered by the Commission, and it has affirmed only one.

It is clear that employees and communities need an entirely new form of remedy to undergird the benefits which public policy vouchsafes for them, lest the standard of living so laboriously created with the help of the fair labor standards required in the domestic legislation be compromised, weakened, or destroyed by an unnatural forebearance by the Government to imported goods produced under labor conditions abroad which would not be tolerated in this country. This new remedy should be administered by the Government's most knowledgeable and authoritative official in labor standards matters. In short, the new procedure must be job-oriented, as jobs constitute the lifeblood of our economy and society. The bill establishes a procedure and designates the Secretary of Labor as its administrator, for this very purpose.

Of particular significance is the bill's recognition of communities, and their vital dependence upon employment. The communities in which America's workers live are the forgotten entities in our Nation's scheme for the regulation of foreign commerce. They do not now have any forum in which they may specifically invoke tariff adjustment or import regulation remedies. Traditionally, access to these remedies has been limited to domestic industries, firms, and groups of workers.

When jobs are lost, particularly in the labor-intensive industries, as a result of import disruption of the domestic market, the workers may be able to adjust by a painful process of reeducation and relocation. The communities they leave behind, however, cannot recover so readily. The closing of plants and the loss of employment seriously undermines the economic base of these communities and diminishes the means which they have available for providing educational, health, police, and other social and municipal services necessary for the well-being of their citizens. The migration of displaced workers from the Nation's smaller communities to the possibly more sophisticated labor markets of larger cities has social implications which are beyond the scope of this report. It is sufficient to note here that the Government has a responsible concern for the welfare of all the Nation's communities—small, as well as large. It is especially the case that the smaller communities suffer when the standard of living of their citizens, who are employed, is detrimentally affected by any cause, including the impact of excessive imports.

Title III of the bill also amends section 4 of the Act to impose requirements in the case of any contract:

(1) which is for the manufacturing or furnishing of materials, supplies. articles, or equipment,

(2) which is an amount exceeding $10,000,

(3) which is to be performed outside any State, but is for goods, supplies, articles, or equipment to be used within a State, and

(4) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party or under which payment is to be made in whole or in part from loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof.

Such contract shall require (A) all persons employed by the contractor in carrying out the contract to be employed on terms and conditions which are not substantially less favorable to such persons than those which would be required under this Act if the contract were to be performed within a State, and (B) the contractor to make such reports, in such form and containing such information, as may be required to enable the contracting agency (or such other Federal agency as the President may designate) to insure that the contractor complies with provisions of the contract required by this subsection, and to keep such records and afford such access thereto as such agency may find necessary to assure the correctness and verification of such reports.

ESTIMATE OF COST

Pursuant to the requirements of clause 7 of rule XIII of the Rules of the House of Representatives, the committee estimates the cost of the legislation to be $1.5 million in fiscal year 1972, and $3 million in each of the five succeeding fiscal years.

No Government agency has submitted to the committee any cost estimate by which a comparison can be made with the committee estimate of the cost of this legislation. The estimate, however, is based upon the extension of employee coverage under the Fair Labor Standards Act which the bill provides, in relationship with the number of employees presently covered by the Act. That relationship is applied to the current cost of administering and enforcing the Act in determining the committee estimate.

SECTION-BY-SECTION ANALYSIS

TITLE I—INCREASE IN MINIMUM WAGE

Section 101. *Nonagricultural Employees.*—Subsection (a) amends section 6(a)(1) of the Fair Labor Standards Act of 1938 (hereinafter in this analysis referred to as the "Act") to increase the minimum wage rate for—

(1) nonagricultural employees covered by the Act prior to the effective date of the 1966 amendments to the Act, and

(2) Federal employees covered by the 1966 amendments to the Act,

from not less than $1.60 an hour to not less than $2.00 an hour, effective January 1, 1972.

Subsection (b) amends section 6 of the Act to increase the minimum wage rate for nonagricultural employees first covered by the Act by the 1966 or 1971 amendments to the Act from not less than $1.60 and hour to not less than $1.80 an hour, effective January 1, 1972, and to not less than $2.00 an hour, effective January 1, 1973.

Section 102. *Agricultural Employees.*—This section increases the minimum wage rate for agricultural employees covered by the Act

from $1.30 an hour to not less than $1.50 an hour, effective January 1, 1972, and to not less than $1.70 an hour, effective January 1, 1973.

Section 103. *Government, Hotel, Motel, Restaurant, and Food Service Employees in Puerto Rico and the Virgin Islands.*—The provisions of the Act (sections 5, 6(c), and 8) which provide for the issuance of wage orders setting wage rates for employees in Puerto Rico and the Virgin Islands at rates less than those applicable in the several States and the District of Columbia are made inapplicable by this section to hotel, motel, restaurant, food service, conglomerate, and United States and the Virgin Islands government employees in Puerto Rico and the Virgin Islands. The wage rate for such employees will be determined in the same manner as it is determined for employees in the several States and the District of Columbia.

Section 104. *Other Employees in Puerto Rico and the Virgin Islands.*—

(1) *Employees covered before 1966 amendments to the Act.*—Subsection (a) provides in a new section 6(c)(2) a 25 per centum increase in the most recent wage order applicable to an employee in Puerto Rico or the Virgin Islands covered by the Act prior to the effective date of the 1966 amendments to the Act. Such increase shall take effect on January 1, 1972.

(2) *Agricultural employees.*—Subsection (a) provides in a new section 6(c)(3) two 16 per centum increases in the most recent wage order applicable to an agricultural employee in Puerto Rico or the Virgin Islands who is covered by the Act. Such increases shall take effect on January 1, 1972, and January 1, 1973. In the case of an agricultural employee whose hourly wages are subsidized, in whole or in part, by the Government of Puerto Rico, the per centum increase shall be applied to the most recent wage order, increased by the amount of the subsidy in effect on October 7, 1971. The review procedure in existing law (described below) does not apply to the increases for agricultural employees receiving subsidized wages.

(3) *Nonagricultural employees covered by 1966 amendments.*—Subsection (a) provides in a new section 6(c)(4) two 12.5 per centum increases in the most recent wage order applicable to a nonagricultural employee in Puerto Rico or the Virgin Islands first covered by the Act by the 1966 amendments. Such increases shall take effect on January 1, 1972, and January 1, 1973.

(4) *Employees covered by 1971 amendments.*—A new section 6(c)(5) provides for the establishment of special industry committees to recommend minimum wage rates for employees newly covered by the 1971 amendments whose wage rate is to be established under section 6(c). (Note, the amendment made by section 103 placed certain employees in Puerto Rico and the Virgin Islands under section 6(a) or 6(b).)

(5) *Minimum wage rate applicable to all wage order employees.*—A new section 6(c)(7) states that effective on and after January 1, 1972, no wage rate for any employee in Puerto Rico or the Virgin Islands set by a wage order may be less than 60 per centum of the wage rate that would apply to such employee if his wage rate was not set by a wage order. Thus, the minimum wage rate for an employee who would otherwise be subject to section 6(a) must be not less than $1.20 an hour; for an employee who would otherwise be subject to section 6(b)(4) (rate for agricultural employees) the minimum wage rate must be not less than $.90 an hour; and for an employee who would otherwise be subject

to section 6(b)(5) (rate for newly-covered employees) the minimum wage rate must be not less than $1.08 an hour.

Each increase made by this section is stated in the law as a percentage of the wage rate in effect under the most recent wage order issued before January 1, 1972, and is to be applied to the wage rate in effect on the effective date (or dates) of the increase.

The review procedure first established by the 1961 amendments is retained, in a new section 6(c)(6), and will apply to each increase of a wage order rate other than the increase for agricultural employees whose wages are subsidized and any increase resulting from the minimum described in paragraph (5). This procedure permits any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands to petition the Secretary for the appointment of a special industry committee to recommend the minimum wage rate or rates to be paid such employees in lieu of the rate or rates required as a result of the percentage increases. The Secretary may appoint such a special industry committee if he has reasonable cause to believe that compliance with the increase will curtail employment in such industry.

Subsection (b) amends section 8 of the Act to require that all special industry committees (whether appointed under section 5 or section 6(c)) recommend the minimum wage rate applicable in the several States and the District of Columbia unless there is substantial documentary evidence which establishes that the industry (or predominant portion thereof) is unable to pay that wage. Under an amendment to section 10 a court which reviews an order of the Secretary made on the recommendation of a special industry committee may modify the order by establishing a different wage rate than that provided in the order.

TITLE II—EXTENSION OF COVERAGE; REVISION OF EXEMPTIONS

Section 201. *Federal and State Employees.*—This section amends sections 3(d), 3(r), 3(s), 13(b), and 18(b) of the Act to extend (1) to all employees of enterprises engaged in the activities of the Government of the United States or of any State or political subdivision of a State the minimum wage protection of the Act, and (2) to all such employees, other than State and local government employees engaged in fire protection and law enforcement activities, the overtime protection of the Act. The minimum wage rate of Federal employees covered by the 1966 amendments will be determined under section 6(a) (effective January 1, 1972, not less than $2.00 an hour) and the minimum wage rate for the other employees covered by the amendments made by this section will be determined under section 6(b)(5) (effective January 1, 1972, not less than $1.80 an hour; and effective January 1, 1973, not less than $2.00 an hour). Section 18(b) of the Act is amended to make it clear that any employee employed in any Federal nonappropriated fund instrumentality (not just such instrumentalities of the Armed Forces) is to have his pay fixed as if he were a Federal employee who was covered by the 1966 amendments.

Section 202. *Transit Employees.*—This section amends section 13(b)(7) of the Act to reduce and ultimately repeal the present overtime exemption for any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation

by a State or local agency. During 1972, overtime compensation must be paid to such employees for hours worked in excess of 48 per week; during 1973, for hours worked in excess of 44 per week; and, beginning January 1, 1974, for hours worked in excess of 40 per week.

Under an amendment made by subsection (d) to section 7 of the Act it is provided that in determining the hours of employment of a transit employee, the hours he is employed in charter activities shall not be included if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) employment in such activities is not part of such employee's regular employment.

Section 203. *Nursing Home Employees.*—This section amends sections 13(b)(8) and 7(j) of the Act to revise the overtime exemption for nursing home employees. The present overtime exemption in section 13(b)(8) for nursing home employees requires the payment of overtime compensation for hours worked in excess of 48 in any workweek. Under the new overtime exemption in section 7(j) overtime compensation must be paid for hours worked in excess of 8 in any workday and 80 in any work period of fourteen consecutive days. This exemption applies only if the work is performed under an agreement or understanding between the employer and employee entered into before the work is begun. This exemption is identical to that presently provided for hospital employees.

Section 204. *Sugar Employees.*—Section 13(b)(15) is amended to repeal the overtime exemption for employees engaged in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (other than refined sugar) or syrup.

Section 205. *Seasonal Industry Employees.*—Sections 7(c) and 7(d) of the Act are amended and ultimately repealed to reduce and ultimately repeal the present overtime exemption for employees in seasonal industries and agricultural processing. Section 7(c) of the Act provides an overtime exemption for those hours of employment of employees in seasonal industries which do not exceed 10 hours in any workday or 50 hours in any workweek. Section 7(d) provides an overtime exemption for those hours of employment of employees in agricultural processing which do not exceed 10 hours in any workday or 48 hours in any workweek. Either exemption may not be taken by any employer for more than 10 workweeks in any calendar year, except that if any employer does not qualify for the overtime exemption under both categories, the exemption period for the category under which he does qualify is 14 workweeks during the calendar year.

The amendments to section 7(c) reduce the overtime exemption for employment in seasonal industries to 9 hours in any workday and to 48 hours in any workweek, and the period during which the exemption may be taken by an employer who qualifies under both categories of exemptions is reduced to not more than 7 workweeks during calendar year 1972, and to not more than 5 workweeks during calendar year 1973. The overtime exemption under section 7(d) for employment in agricultural processing is reduced to 9 hours in any workday (the 48 hours per week limitation in existing law is not affected), and the period during which the exemption may be taken by an employer who qualifies under both categories of exemptions is reduced to not more than 7 workweeks during calendar year 1972, and to not more than 5 workweeks during calendar year 1973. In the case of an employer who does not qualify for the overtime exemption under both categories, the exemption period is reduced from 14 workweeks

during the calendar year to 10 workweeks during 1972, and to 7 workweeks during 1973. Effective January 1, 1974, both overtime exemptions are repealed.

Section 206. *Domestic Service Employees Employed in Households.*—This section states a finding of Congress that domestic service in households directly affects commerce and that the minimum wage and overtime protection of the Act should have been available to such employees since its enactment. This section prescribes minimum wage (not less than $1.80 an hour effective January 1, 1972, and not less than $2.00 an hour effective January 1, 1973) and overtime (additional compensation for hours worked in excess of 40 per week) rates applicable to such employees. The minimum wage and overtime provisions will not apply to any such employee who resides in the household of his employer. Except as noted, any employee employed in domestic service is covered unless the Secretary determines that such employee's wages would not qualify as "wages" under section 209 of the Social Security Act. Wages of at least $50 in a calendar quarter are included under that section.

Section 207. *Equal Pay for Equal Work.*—This section amends section 13(a) to make it clear that the prohibition in section 6(d) of the Act against sex discrimination in employment is not waived for those employees to whom section 6 is otherwise made inapplicable by section 13(a)(1) (executive, administrative, or professional personnel and outside salesmen). This section also states the intent of Congress that, notwithstanding any other provision of law, the remedies provided by section 16 of the Act (Penalties) shall be available to any employee against an employer who violates section 6(d).

Section 208. *Employment of Students.*—This section amends sections 14(b) and 14(c) of the Act to provide for the employment of full-time students (regardless of age but in compliance with applicable child labor laws) at wage rates less than those prescribed by the Act. Such employment may be in any occupation other than an occupation excluded by the section or one determined by the Secretary to be particularly hazardous for the employment of such students. Students may be employed pursuant to special certificates issued by the Secretary at a wage rate of not less than 85 per centum of the applicable minimum wage rate or $1.60 an hour ($1.30 an hour in the case of employment in agriculture), whichever is the higher. Such special certificates shall provide that such students shall, except during vacation periods, be employed on a part-time basis (not to exceed 20 hours in any workweek). In the case of an employer who intends to employ five or more students under section 14(b) or 14(c) of the Act, the Secretary may not issue a special certificate unless he finds the employment of any such student "will not create a substantial probability of reducing the full-time employment opportunities" of other workers. In the case of an employer who intends to employ less than five students under section 14(b) or 14(c) of the Act, the Secretary may issue a special certificate only if the employer certifies to the Secretary that he is not thereby reducing the full-time employment opportunities for other workers. Sections 15 (Prohibited Acts) and 16 (Penalties) of the Act will apply to an employer who violates the requirements of section 14(b) or 14(c). Under an amendment to section 4(d), a summary of the special certificates issued under sections 14(b) and 14(c) is required to be included in the Secretary's annual report on the Act.

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Section 208 also amends section 14 of the Act to authorize the Secretary to waive the minimum wage and overtime provisions of the Act with respect to a student employed by his elementary or secondary school if his employment constitutes an integral part of the regular education program provided by the school.

Section 209. *Employees of Preschool Centers.*—This section amends sections 3(r), 3(s) and 13(a)(1) of the Act to extend to employees of preschool centers the same minimum wage and overtime protection now applicable to employees of elementary and secondary schools.

Section 210. *Laundry and Cleaning Establishments To Be Considered Service Establishments for Certain Purposes.*— This section requires the consideration of laundries and dry cleaning establishments as service establishments in the administration of sections 7(i) (relating to overtime exemption for commission employees of retail or service establishments) and 13(a)(1) (relating to minimum wage and overtime exemption for executive and administrative personnel and outside salesmen) of the Act.

Section 211. *Maids and Custodial Employees of Hotels and Motels.*— This section amends section 13(b)(8) of the Act to extend overtime coverage to maids and custodial employees of hotels and motels.

Section 212. *Employees of Conglomerates.*—This section amends section 13 of the Act to preclude the availability of the minimum wage and overtime exemptions of that section (except those provided employees in executive, administrative, or professional capacities, or in the capacity of outside salesman, and the overtime exemptions provided employees whose hours of service are subject to the provisions of the Motor Carrier Act, Interstate Commerce Act, or Railway Labor Act) to conglomerates with an annual gross volume of sales made or business done in excess of $5,000,000. Thus, except as noted, any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $5,000,000 (exclusive of excise taxes at the retail level which are separately stated) must be paid in accordance with sections 6 and 7 of the Act.

Section 213. *Employment Referrals by Public Employment Service Agencies.*—This section prohibits public employment service agencies from assisting in the placement of any individual with an employer who will pay such individual at a wage rate less than the minimum wage rate applicable to nonagricultural employees covered under the minimum wage provisions by the 1966 or 1971 amendments to the Act. This section also provides that each such agency shall keep current a listing of local employment opportunities offered by the United States or by an employer provided Federal funds to pay all or part of the compensation for the job, and make such listing available to individuals seeking employment through such agency.

Section 214. *Employment of Illegal Aliens.*—This section amends section 4 to provide that any employer subject to the Act who knowingly employs any alien who is in the United States in violation of law or in an immigration status in which the employment is not

authorized, shall be guilty of a misdemeanor and subject to a fine of not more than $1,000, or imprisonment for not more than a year, or both such fine and imprisonment for each alien so employed. The amendment also provides that any contract subject to the Davis-Bacon Act, the Walsh-Healey Act, or the Service Contract Act of 1965, shall contain an additional provision by which the contractor agrees not to employ any such alien in the performance of the contract.

TITLE III—RELIEF FOR DOMESTIC INSTITUTIONS AND EMPLOYEES INJURED BY INCREASED IMPORTS FROM LOW-WAGE AREAS

Section 2 of the Act (Finding and Declaration of Policy) is amended by this title to include the recognition by the Congress that the unregulated importation of goods produced by industries in foreign nations under labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

The statement of policy in section 2 is further amended to declare it to be the policy of the Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to provide for the regulation of imports of goods in such manner as will correct and as rapidly as possible eliminate any serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States and the economic welfare of the communities in which they are employed from conditions above referred to in the industries providing them employment in which increased imports are a substantially contributing factor.

Section 4 of the Act is amended to implement the policy declared by the above amendments to section 2 of the Act. Upon the request of the President, upon resolution of either House of Congress, upon application of the representative of any employee organization in a domestic industry, upon application of any interested party, or upon his own motion, the Secretary of Labor shall promptly make an investigation and make a report thereon not later than 4 months after the application is made to determine whether any product is being imported into the United States under such circumstances, due in whole or in part to the fact that such foreign goods were produced under conditions such as the detrimental labor conditions referred to above, which are causing or substantially contributing to serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States or to the economic welfare of the community in which any such group of workers are employed. In the course of any such investigation the Secretary or his delegate shall hold hearings. Should the Secretary find that an imported product is or likely will be sold in competition with like or competitive goods produced in the United States under such circumstances, he shall promptly report his finding to that effect to the President. Upon receipt of the Secretary's report, the President shall take such action as he deems appropriate to remove

such impairment or threat of impairment, in addition to any other customs treatment provided by law.

Section 4 of the Act is also amended to impose certain requirements in the case of any contract—

(1) which is for the manufacturing or furnishing of materials, supplies, articles, or equipment,

(2) which is an amount exceeding $10,000,

(3) which is to be performed outside any State, but is for goods, supplies, articles, or equipment to be used within a State, and

(4) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party or under which payment is to be made in whole or in part from loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof.

Such contract shall require (A) all persons employed by the contractor in carrying out the contract to be employed on terms and conditions which are not substantially less favorable to such persons than those which would be required under this Act if the contract were to be performed within a State, and (B) the contractor to make such reports, in such form and containing such information, as may be required to enable the contracting agency (or such other Federal agency as the President may designate) to insure that the contractor complies with provisions of the contract required by this subsection, and to keep such records and afford such access thereto as such agency may find necessary to assure the correctness and verification of such reports.

TITLE IV—TECHNICAL AMENDMENTS

Section 401. *Conforming Amendments.*—This section amends the Act and other provisions of law to reflect the amendments made by the preceding provisions of the bill.

Section 402. *Updating Amendments.*—This section amends the Act to conform its provisions to changes made by Reorganization Plans and by the codification of title 5, United States Code.

TITLE V—EFFECTIVE DATE

Section 501. *Effective Date.*—This section provides that the effective date of the 1971 amendments shall be January 1, 1972, except as otherwise provided.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FAIR LABOR STANDARDS ACT OF 1938

AN ACT To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938."

FINDING AND DECLARATION OF POLICY

SEC. 2. (a) The Congress [hereby] finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers *and the unregulated importation of goods produced by industries in foreign nations under such conditions* (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

(c) It is further declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to provide for the regulation of imports of goods in such manner as will correct and as rapidly as possible eliminate any serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States and the economic welfare of the communities in which they are employed from conditions above referred to in the industries providing them employment in which increased imports are a substantially contributing factor.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

[(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence), or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.]

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes the United States or any State or political subdivision of a State, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e) "Employee" includes any individual employed by an employer, except that such term shall not, for the purposes of section 3(u), include—

(1) any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family, or

(2) any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence of the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or

mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the [Chief of the Children's Bureau in the Department of Labor] *Secretary* shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the [Chief of the Children's Bureau] *Secretary* certifying that such person is above the oppressive child labor age. The [Chief of the Children's Bureau] *Secretary* shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the [Chief of the Children's Bureau] *Secretary* determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the [Administrator] *Secretary*, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours Worked.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be

excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this subsection, the activities performed by any person or persons—

(1) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, *preschool center*, or an institution of higher education (regardless of whether or not such hospital, institution, *preschool center*, or school is public or private or operated for profit or not for profit), or

(2) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), *or*

(3) in connection with the activities of the Government of the United States or of any State or political subdivision of a State,

shall be deemed to be activities performed for a business purpose.

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which—

(1) [during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gaso-

line service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969,] is an enterprise whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

(2) is engaged in laundering, cleaning, or repairing clothing or fabrics;

(3) is engaged in the business of construction or reconstruction, or both; [or]

(4) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, *preschool center*, or an institution of higher education (regardless of whether or not such hospital, institution, *preschool center*, or school is public or private or operated for profit or not for profit) [.] *; or*

(5) is an activity of the Government of the United States or of any State or political subdivision of a State.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

[ADMINISTRATOR] *ADMINISTRATION*

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate [, and shall receive compensation at the rate of $15,000 a year].

(b) The [Administrator] *Secretary* may, subject to the [civil service laws] *provisions of title 5 of the United States Code governing appointments in the competitive service*, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the [Classification Act of 1923, as amended] *provisions of such title relating to classification and General Schedule pay rates*. The [Administrator] *Secretary* may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as

may from time to time be needed. Attorneys appointed under this section may appear for and represent the [Administrator] *Secretary* in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the [Administrator] *Secretary*, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the [Administrator] *Secretary* shall be in the District of Columbia, but he or his duly authorized representatives may exercise any or all of his powers in any place.

(d) The [Administrator] *Secretary* shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. *Such report shall also include a summary of the special certificates issued under sections 14(b) and 14(c).*

[(e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.]

(e)(1) Upon the request of the President, or upon resolution of either House of Congress, or upon application of the representative of any employee organization in a domestic industry, or upon application of any interested party, or upon his own motion, the Secretary of Labor shall promptly make an investigation and make a report thereon not later than four months after the application is made to determine whether any product is being imported into the United States under such circumstances, due in whole or in part to the fact that such foreign goods were produced under conditions such as those referred to in subsection (a) of section 2 of this Act which are causing or substantially contributing to serious impairment or threat of impairment to the health, efficiency, and general well-being of any group of workers in the United States or to the economic welfare of the community in which any such group of workers are employed.

(2) In the course of any such investigation the Secretary or his delegate shall hold hearings, giving reasonable public notice thereof, and shall afford reasonable opportunity for interested parties to be present, to produce evidence, and to be heard at such hearings.

(3) Should the Secretary find, as a result of the investigation and hearings, that an imported product is or likely will be sold in competition with like or competitive goods produced in the United States under such circumstances, he shall promptly report his finding to that effect to the President. The Secretary shall immediately make public his findings and report to the President, and shall cause a summary thereof to be published in the Federal Register.

(4) Upon receipt of the report of the Secretary containing a finding that an imported product is or likely will be sold in competition with like or competitive goods produced in the United States under such circumstances, the President shall take such action as he deems appropriate to remove such impairment or threat of impairment, in addition to any other customs threatment provided by law.

(f) In the case of any contract—

(1) which is for the manufacturing or furnishing of materials, supplies, articles, or equipment,

(2) which is an amount exceeding $10,000,

(3) which is to be performed outside any State, but is for goods, supplies, articles, or equipment to be used within a State, and

(4) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party or under which payment is to be made in whole or in part from loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof,

such contract shall require (A) all persons employed by the contractor in carrying out the contract to be employed on terms and conditions which are not substantially less favorable to such persons than those which would be required under this Act if the contract were to be performed within a State, and (B) the contractor to make such reports, in such form and containing such information, as may be required to enable the contracting agency (or such other Federal agency as the President may designate) to insure that the contractor complies with provisions of the contract required by this subsection, and to keep such records and afford such access thereto as such agency may find necessary to assure the correctness and verification of such reports.

(g) Any employer subject to this Act, including any person acting as an agent of such employer, who knowingly employs any alien who is in the United States in violation of law or in an immigration status in which such employment is not authorized, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, for each alien in respect to whom any violation of this subsection occurs

(h) Any contract subject to the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act), the Act of June 30, 1936 (41 U.S.C. 35–45, known as the Walsh-Healey Act), or the Service Contract Act of 1965 (41 U.S.C. 351–357) shall contain, in addition to the provisions required by such Acts, a provision by which the contractor agrees not to employ in the performance of such contract any alien who is in the United States in violation of law or in an immigration status in which such employment is not authorized. Any violation of such contract provision will be subject to the penalties provided in such Act, as as well as in this Act.

(i) Neither the Secretary nor the Attorney General shall, by rule or regulation, grant any general exemption to, or waiver of, this provision, with respect to any class of employers or employees.

SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) The [Administrator] *Secretary* shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce, or the [Administrator] *Secretary* may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 8.

(b) An industry committee shall be appointed by the [Administrator] *Secretary* without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the [Administrator] *Secretary* shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the [Administrator] *Secretary* shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation, for their services a reasonable per diem, which the [Administrator] *Secretary* shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The [Administrator] *Secretary* shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The [Administrator] *Secretary* shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the [Administrator] *Secretary* to furnish additional information to aid it in its deliberations.

(e) The provisions of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, (3) by any other retail or service establishment

if such employee is employed primarily in connection with the preparation or offering of food or beverages for human consumption either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or (4) by an establishment described in section 13(g). The minimum wage rate of such an employee shall be determined in accordance with sections 6(a), 6(b)(5), 7, 13, and 14, of this Act.

MINIMUM WAGES

SEC. 6. (a) [Every employer] *Except as provided in this section, effective January 1, 1972, every employer* shall pay [to] each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, [wages at the following rates:] *at a wage rate of not less than $2 an hour.*

[(1) not less than $1.40 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966 and not less than $1.60 an hour thereafter, except as otherwise provided in this section;]

(b) In lieu of the wage rate prescribed by subsection (a), every employer shall pay each of his employees (described in a paragraph of this subsection) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages, at the following rates:

[(2) if] *(1) If* such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The [Administrator] *Secretary*, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers[;].

[(3) if] *(2) If* such employee is employed in American Samoa, [in lieu of the rate or rates provided by this subsection or subsection (b),] not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint

in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this Act as amended from time to time. Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this Act to employees employed in American Samoa as pertain to special industry committees established under section 5 with respect to employees employed in Puerto Rico or the Virgin Islands. The minimum wage rate thus established shall not exceed the rate prescribed in [paragraph (1) of this subsection;] *subsection (a).*

[(4) if] *(3) If* such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by [paragraph (1) of this subsection] *subsection (a)* for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement) [; or].

[(5) if such employee is employed in agriculture, not less than $1 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966, not less than $1.15 an hour during the second year from such date, and not less than $1.30 an hour thereafter.]

(4) If such employee is employed in agriculture, effective January 1, 1972, not less than $1.50 an hour; and effective January 1, 1973, not less than $1.70 an hour.

(5) If this section was made applicable to such employee by the amendments made to this Act (other than section 18 thereof) by the Fair Labor Standards Amendments of 1966 or the Fair Labor Standards Amendments of 1971, effective January 1, 1972, not less than $1.80 an hour; and effective January 1, 1973, not less than $2 an hour.

[(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, wages at the following rates:

[(1) not less than $1 an hour during the first year from the effective date of such amendments,

[(2) not less than $1.15 an hour during the second year from such date,

[(3) not less than $1.30 an hour during the third year from such date,

[(4) not less than $1.45 an hour during the fourth year from such date, and

[(5) not less than $1.60 an hour thereafter.]

(c)(1) The rate or rates provided by subsections (a) and (b) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee

is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5.

[(2) In the case of any such employee who is covered by such a wage order and to whom the rate or rates prescribed by subsection (a) would otherwise apply, the following rates shall apply:

[(A) The rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, increased by 12 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C). Such rate or rates shall become effective sixty days after the effective date of the Fair Labor Standards Amendments of 1966 or one year from the effective date of the most recent wage order applicable to such employee theretofore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under section 5, whichever is later.

[(B) Beginning one year after the applicable effective date under paragraph (A), not less than the rate or rates prescribed by paragraph (A), increased by an amount equal to 16 per centum of the rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966 unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C).

[(C) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a review committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by paragraph (A) or (B). Any such application with respect to any rate or rates provided for under paragraph (A) shall be filed within sixty days following the enactment of the Fair Labor Standards Amendments of 1966 and any such application with respect to any rate or rates provided for under paragraph (B) shall be filed not more than one hundred and twenty days and not less than sixty days prior to the effective date of the applicable rate or rates under paragraph (B). The Secretary shall promptly consider such application and may appoint a review committee if he has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (A) or (B) will substantially curtail employment in such industry. The Secretary's decision upon any such application shall be final. Any wage order issued pursuant to the recommendations of a review committee appointed under this paragraph shall take effect on the applicable effective date provided in paragraph (A) or (B).

[(D) In the event a wage order has not been issued pursuant to the recommendation of a review committee prior to the applicable effective date under paragraph (A) or (B), the applicable percentage increase provided by any such paragraph shall take effect on the effective date prescribed therein, except with respect

to the employees of an employer who filed an application under paragraph (C) and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

[3. In the case of any such employee to whom subsection (a)(5) or subsection (b) would otherwise apply, the Secretary shall within sixty days after the effective date of the Fair Labor Standards Amendments of 1966 appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 8, but not in excess of the applicable rate provided by subsection (a)(5) or subsection (b) to be applicable to such employee in lieu of the rate or rates prescribed by subsection (a)(5) or subsection (b), as the case may be. The rate or rates recommended by the special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1966.

[(4) The provisions of section 5 and section 8, relating to special industry committees, shall be applicable to review committees appointed under this subsection. The appointment of a review committee shall be in addition to and not in lieu of any special industry committee required to be appointed pursuant to the provisions of subsection (a) of section 8, except that no special industry committee shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary by a review committee to be paid in lieu of the rate or rates provided for under paragraph (A) or (B). The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or subsection (b)) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee.]

(2)(A) In the case of any such employee who is covered by such a wage order and to whom the rate prescribed by subsection (a) would otherwise apply, the following rates shall apply effective January 1, 1972: The rate or rates applicable under the most recent wage order issued by the Secretary before January 1, 1972, covering such employee, increased by 25 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed under paragraph (6).

(B) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands,

may apply to the Secretary in writing for the appointment of a special industry committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by subparagraph (A). Any such application shall be filed before January 1, 1972.

(3)(A) In the case of any such employee who is covered by such a wage order and to whom the rate or rates prescribed by subsection (b)(4) for employees in agriculture would otherwise apply, the following rates shall apply:

(i) Effective January 1, 1972, the rate or rates applicable under the most recent wage order issued by the Secretary before such date covering such employee, increased by 16 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed under paragraph (6).

(ii) Effective January 1, 1973, not less than the highest rate or rates (including any increase provided under clause (i)) in effect before such date under a wage order covering such employee, increased by an amount equal to 16 per centum of the rate or rates applicable to the most recent wage order issued by the Secretary before January 1, 1972, covering such employee, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed under paragraph (6).

(B) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a special industry committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by clause (i) or clause (ii) of subparagraph (A). Any such application with respect to any rate or rates provided for under clause (i) of subparagraph (A) shall be filed before January 1, 1972, and any such application with respect to any rate or rates provided for under clause (ii) of subparagraph (A) shall be filed not before September 1, 1972, and not after November 1, 1972.

(C) Notwithstanding subparagraph (A) or (B) of this paragraph, in the case of any employee described in subparagraph (A) whose hourly wages are subsidized, in whole or in part, by the Government of Puerto Rico, the following rates shall apply:

(i) Effective January 1, 1972, the rate or rates applicable under the most recent wage order issued by the Secretary before such date covering such employee, increased by (I) the amount of the subsidy in effect on October 7, 1971, and (II) 16 per centum.

(ii) Effective January 1, 1973, not less than the highest rate or rates (including the increase provided under clause (i)) in effect before such date under a wage order covering such employee, increased by (I) an amount equal to 16 per centum of the rate or rates applicable to the most recent wage order issued by the Secretary before January 1, 1972, covering such employee, and (II) the amount of the subsidy in effect on October 7, 1971.

(4)(A) In the case of any such employee who is covered by such a wage order and to whom this section was made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, the following rates shall apply:

(i) Effective January 1, 1972, the rate or rates applicable under the most recent wage order issued by the Secretary before such date covering such employee, increased by 12.5 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed under paragraph (6).

(ii) Effective January 1, 1973, not less than the highest rate or rates (including any increase provided under clause (i)) in effect before such date under a wage order covering such employee, increased by an amount equal to 12.5 per centum of the rate or rates applicable to the most recent wage order issued by the Secretary before January 1, 1972, covering such employee, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed under paragraph (6).

(B) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a special industry committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by clause (i) or clause (ii) of subparagraph (A). Any such application with respect to any rate or rates provided for under clause (i) of subparagraph (A) shall be filed before January 1, 1972, and any such application with respect to any rate or rates provided for under clause (ii) of subparagraph (A) shall be filed not before September 1, 1972, and not after November 1, 1972.

(5) Except as provided in section 5(e), in the case of any such employee to whom this section was made applicable by the amendments made by the Fair Labor Standards Amendments of 1971, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1971, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 8, but not in excess of the applicable rate provided by subsection (b)(5), to be applicable to such employee in lieu of the rate or rates prescribed by such subsection. The rate or rates recommended by the special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not later than January 1, 1972.

(6)(A) The Secretary shall promptly consider any application duly filed under paragraph (2), (3), or (4) for a special industry committee and may appoint a special industry committee if he has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (2), (3), or (4), as the case may be, will substantially curtail employment in the industry with respect to which the application was filed. The Secretary's decision upon any such application shall be final. In appointing a special industry committee pursuant to this paragraph the Secretary shall, to the extent possible, appoint persons who were most recently convened under section 8 to the special industry committee for such industry. Any wage order issued pursuant to the recommendations of a special industry committee appointed under this paragaph shall take effect on the applicable effective date provided in paragraph (2), (3), or (4), as the case may be. In the event a wage order has not been

issued pursuant to the recommendation of a special industry committee appointed under this paragraph prior to the applicable effective date under paragraph (2), (3), or (4), as the case may be, the applicable percentage increase provided by any such paragraph shall take effect on the effective date prescribed therein, except with respect to the employees of an employer who filed an application for appointment of a special industry committee and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held in a special deposit account and shall be paid, on order to the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

(B) The provisions of section 5 and section 8, relating to special industry committees, shall be applicable to special industry committees appointed under this paragraph. The appointment of a special industry committee under this paragraph shall be in addition to and not in lieu of any special industry committee required to be convened pursuant to section 8(a), except that no special industry committee convened under that section shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary by a special industry committee (appointed under this paragraph) to be paid in lieu of the rate or rates provided for under paragraph (2), (3), or (4), as the case may be.

(C) The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or subsection (b)) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee.

(7) Notwithstanding any other provision of this subsection, effective on and after January 1, 1972, no wage rate in effect under a wage order for any employee may be less than 60 per centum of the wage rate that (but for this subsection) would be applicable to such employee under subsection (a), (b)(4), or (b)(5).

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e)[(1)] Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof), every employer providing any contract services [(other than linen supply services)] under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351–357) or to whom subsection (a)[(1)] of this section is not applicable, [wages at rates not less than the rates provided for in subsection (b)] *wages at a rate not less than the rate provided for in such subsection* [of this section].

[(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.]

(f) Any employee who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b)(5) unless such employee's compensation for such service would not, as determined by the Secretary, constitute "wages" under section 209 of the Social Security Act.

MAXIMUM HOURS

SEC. 7. (a)[(1)] Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

[(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

[(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

[(B) for a workweek longer than forty-two hours during the second year from such date, or

[(C) for a workweek longer than forty hours after the expiration of the second year from such date.

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.]

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks, or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterpise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 6,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) For a period or periods of not more than [ten] *seven* workweeks in the aggregate in any calendar year, or [fourteen] *ten* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of [ten] *nine* hours in any workday, or for employment by such employer in excess of [fifty] *forty-eight* hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(d) For a period or periods of not more than [ten] *seven* workweeks in the aggregate in any calendar year, or [fourteen] *ten* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

(B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

(2) receives compensation for employment by such employer in excess of [ten] *nine* hours in any workday, or for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the [Administrator] *Secretary* set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the [Administrator] *Secretary* paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a)), where such premium rate is not less than one and one-half times the rates established in good faith by the contract or agreement for like work performed during such workday or workweek.

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the mimimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the [Administrator] *Secretary* as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) No employer engaged in the operation of a hospital *or an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises* shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in

any workday and in excess of eighty hours in such fourteen-day period the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) In the case of an employee of an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, whose rates and services are subject to regulation by a State or local agency, in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

(l) Subsection (a) shall apply with respect to any employee who in any workweek is employed in domestic service in a household unless such employee's compensation for such service would not, as determined by the Secretary, constitute "wages" under section 209 of the Social Security Act.

Note.—Sections 7(c) and 7(d) are further changed effective January 1, 1973, and repealed effective January 1, 1974

(Effective January 1, 1973)

MAXIMUM HOURS

SEC. 7. * * *

* * * * * * *

(c) For a period or periods of not more than [seven] *five* workweeks in the aggregate in any calendar year, or [ten] *seven* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of ten hours in any workday, or for employment by such employer in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(d) For a period or periods of not more than [seven] *five* workweeks in the aggregate in any calendar year, or [ten] *seven* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

(B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

(2) receives compensation for employment by such employer in excess of ten hours in any workday, or for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

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[Effective January 1, 1974]

MAXIMUM HOURS

SEC. 7. * * *

* * * * * * *

[(c) For a period or periods of not more than five workweeks in the aggregate in any calendar year, or seven workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of ten hours in any workday, or for employment by such employer in excess of fifty hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

[(d) For a period or periods of not more than five workweeks in the aggregate in any calendar year, or seven workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

[(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

[(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

[(B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

[(2) receives compensation for employment by such employer in excess of nine hours in any workday, or for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.]

* * * * * * *

WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 8. (a) The policy of this Act with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage prescribed in [paragraph (1) of] section 6(a) in each such industry. The [Administrator] *Secretary* shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classification therein. Minimum rates of wages established in accordance with this section which are not equal to the minimum wage rate prescribed in paragraph (1) of section 6(a) shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Upon the convening of any such industry committee, the [Administrator] *Secretary* shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the [Administrator] *Secretary* the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands; *except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or (b), which would be applicable but for section 6(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.*

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that prescribed in [paragraph (1) of] section 6(a)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no

classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provided by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.

(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the [Administrator] *Secretary* finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.

(f) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the [Administrator] *Secretary* deems reasonably calculated to give general notice to interested persons.

ATTENDANCE OF WITNESSES

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the [Chief of the Children's Bureau] *Secretary* and the industry committees.

COURT REVIEW

SEC. 10. (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order

complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, (*including provision for the payment of an appropriate minimum wage rate*) or set aside such order in whole or in part so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the [Administrator's] *Secretary's* order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK REGULATIONS

SEC. 11. (a) The [Administrator] *Secretary* or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the [Administrator] *Secretary* shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the [Administrator] *Secretary* shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the [Administrator] *Secretary* [and the Chief of the Children's Bureau] may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Secretary as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

(d) The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the [Administrator] *Secretary* relating to industrial homework are hereby continued in full force and effect.

CHILD LABOR PROVISIONS

SEC. 12. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods thereform any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The [Chief of the Children's Bureau in the Department of Labor] *Secretary*, or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

EXEMPTIONS

SEC. 13. (a) The provisions of sections 6 (*other than section 6(d) in the case of paragraph (1) of this subsection*) and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools *or pre-school centers*), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the [Administrative Procedure Act] *provisions of subchapter II of chapter 5 of title 5 of the United States Code (relating to administrative procedure)*, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s) (4)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than $250,000 (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale, and is recognized as retail sales or services in the particular industry; or

(3) any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year; or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of

animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 14; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) any employee employed by an establishment which is a motion picture theater; or

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month; or

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number

of employees employed by his employer in such forestry or lumbering operations does not exceed eight; [or]

(14) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco prior to the stemming process, for use as cigar wrapper tobacco[.]; *or*

(15) any employee who is employed in domestic service in a household and who resides in such household.

(b) The provisions of section 7 shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or

(2) any employee of an employer subject to the provisions of part I of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(4) any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof; or

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency *and if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;* or

(8) any employee (*other than an employee of a hotel or motel who is employed to perform maid or custodial services*) employed by an establishment which is a hotel, motel, or restaurant; or [any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, and (B) receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the [Bureau of the Budget] *Office of Management and Budget,* which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of

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such an area but is at least 40 airline miles from the principal city in such area; or

(10) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a); or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a) [(1)]; or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities[, or in the processing of sugar beets, sugarbeet molasses, sugarcane, or maple sap, into sugar (other than refined sugar) or syrup]; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs; or

(19) any employee of a bowling establishment if such employee receives compensation for employment in excess of forty-eight

hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed[.]; *or*

(20) any employee of a State or political subdivision of a State engaged in fire protection or law enforcement activities.

(c)(1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed.

(2) The provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) The provisions of section 7 shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section [6(a)(3)]*6(b)(2)*, except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section [6(a)(3)] *6(b)(2)*, that economic conditions warrant such action.

(f) The provisions of sections 6, 7, 11, and 12, shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone.

(g) Subsection (a) (other than paragraph (1) thereof) and subsection (b) (other than paragraphs (1), (2), and (3) thereof) shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $5,000,000 (exclusive of excise taxes at the retail level which are separately stated).

Note.—Section 13(b)(7) is further changed effective January 1, 1973, and repealed effective January 1, 1974

(Effective January 1, 1973)

EXEMPTIONS

SEC. 13. (a) * * *
(b) * * *
(1) * * *
* * * * * * *

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency and if such employee receives compensation for employment in excess of [forty-eight] *forty-four* hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

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(Effective January 1, 1974)

EXEMPTIONS

SEC. 13.(a) * * *
(b) * * *
* * * * * * *

[(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency and if such employee receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or]

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LEARNERS, APPRENTICES, STUDENTS, AND HANDICAPPED WORKERS

SEC. 14. (a) The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by [regulation or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in retail or service establishments (not to exceed twenty hours in any workweek) or on a part-time or a full-time basis in such establishments during school vacations, under special certificates issued pursuant to regulations of the Secretary, at a wage rate not less than

85 per centum of the minimum wage applicable under section 6, except that the proportion of student hours of employment to total hours of employment of all employees in any establishment may not exceed (1) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (2) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966, such proportion for the corresponding month of the twelve-month period immediately prior to such date, or (3) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in (A) similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, (B) similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.] *special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation other than—*

(1) occupations in mining,

(2) occupations in manufacturing,

(3) occupations in warehousing and storage,

(4) occupations in construction,

(5) the occupation of a longshoreman,

(6) occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components,

(7) the occupation of a motor vehicle driver or outside helper,

(8) logging occupations and occupations in the operation of any sawmill, lathmill, shingle mill, or cooperage stock mill,

(9) occupations involved in the operation of power-driven woodworking machines,

(10) occupations involving exposure to radioactive substances and ionizing radiation,

(11) occupations involved in the operation of power-driven hoisting apparatus,

(12) occupations involved in the operation of power-driven metal forming, punching, and shearing machines,

(13) occupations involving slaughtering, meat packing or processing, or rendering,

(14) occupations involved in the operation of bakery machines,

(15) occupations involved in the operation of paper-products machines,

(16) occupations involved in the manufacture of brick, tile, or kindred products,

(17) occupations involved in the operation of circular saws, band saws, or guillotine shears,

(18) occupations involved in wrecking, demolition, or shipbreaking operations,

(19) occupations in roofing operations,

(20) occupations in excavation operations, or

(21) any other occupation determined by the Secretary to be particularly hazardous for the employment of such students.

Such special certificate shall provide that such students shall, except during vacation periods, be employed on a part-time basis (not to exceed twenty hours in any workweek). The Secretary may not issue any special certificate under this subsection for the employment of a student by any employer if the issuance of such special certificate will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, unless the Secretary finds the employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under this subsection for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may issue a special certificate under this subsection for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection.

(c) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by *special* certificate *issued under a regulation* or order provide for the employment [of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in agriculture (not to exceed twenty hours in any workweek) or on a part-time or a full-time basis in agriculture during school vacations, at a wage rate not less than 85 per centum of the minimum wage applicable under section 6. Before the Secretary may issue a certificate or order under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.], *at a wage rate not less than 85 per centum of the wage rate in effect under section 6(b)(4) or not less than $1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture other than an occupation determined by the Secretary to be particularly hazardous for the employment of such students. Such special certificate shall provide that such students shall, except during vacation periods, be employed on a part-time basis (not to exceed twenty hours in any workweek). The Secretary may not issue any special certificate under this subsection for the employment of a student by any employer if the issuance of such special certificate will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, unless the Secretary finds the employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates*

issued under this subsection. If the issuance of a special certificate under this subsection for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may issue a special certificate under this subsection for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection.

(d)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,

at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3)(A) The Secretary may by regulation or order provide employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(e) The secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school.

PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any

goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the [Administrator] *Secretary* issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the [Administrator] *Secretary* issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

PENALTIES

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except, for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.

The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and the costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection.

(c) The [Administrator] *Secretary* is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. When a written request is filed by any employee with the [Administrator] *Secretary* claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the [Administrator] *Secretary* may bring an action in any court of competent jurisdiction to recover the amount of such claim: *Provided*, That this authority to sue shall not be used by the [Administrator] *Secretary* in any case involving an issue of law which has not been settled finally by the courts, and in any such case no court shall have jurisdiction over such action or proceeding initiated or brought by the [Administrator] *Secretary* if it does involve any issue of law not so finally settled. The consent of any employee to the bringing of any such action by the [Administrator] *Secretary*, unless such action is dismissed without prejudice on motion of the [Administrator] *Secretary*, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. Any sums thus recovered by the [Administrator] *Secretary* on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the [Administrator] *Secretary*, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellanous receipts. In determining when an action is commenced by the [Administrator] *Secretary* under this subsection for the purposes of the statues of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or here-

after performed in a workplace to which the exemption in section 13(f) is applicable, (2) with respect to work performed in Guam, the Canal Zone, or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section [6(a)(3)] *6(b)(2)* at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

INJUNCTION PROCEEDINGS

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).

RELATION TO OTHER LAWS

SEC. 18. (a) No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act, or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

(b) Notwithstanding any other provision of this Act (other than section 13(f)) or any other [law—

[(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, United States Code, or

[(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 6(a)(1) of this Act (except that the wage rate provided for in section 6(b) shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 7(a)(1) of this Act.] *law, any employee employed in a Federal nonappropriated fund instrumentality shall have his basic pay fixed or adjusted at an hourly wage rate which is not less*

than the rate in effect under section 6(a) and shall have his overtime pay fixed or adjusted at an hourly wage rate which is not less than the rate prescribed by section 7(a).

SEPARABILITY OF PROVISIONS

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 5341(a) of Title 5 of the United States Code

§ 5341. Trades and crafts

(a) The pay of employees excepted from chapter 51 of this title by section 5102(c)(7) of this title shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with the prevailing rates. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided for by section 206(a) [(1)] of title 29.

Section 303(a)(2) of the Consumer Credit Protection Act

§ 303. Restriction on garnishment

(a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a) [(1)] of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable.

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

Section 2(b)(1) of the Service Contract Act of 1965

SEC. 2. * * *

* * * * * * *

(b)(1) No contractor who enters into any contract with the Federal Government the principal purpose of which is to furnish services through the use of service employees as defined herein and no subcontractor thereunder shall pay any of his employees engaged in performing work on such contracts less than the minimum wage specified under section 6(a)[(1)] of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060; 29 U.S.C. 201, et seq.).

Section 610–1(a) of the Economic Opportunity Act of 1964

COMPARABILITY OF WAGES

SEC. 610–1. (a) The Director shall take such action as may be necessary to assure that persons employed in carrying out programs financed under part A of title I or title II (except a person compensated as provided in section 602) shall not receive compensation at a rate which is (1) in excess of the average rate of compensation paid in the area where the program is carried out to a substantial number of the persons providing substantially comparable services, or in excess of the average rate of compensation paid to a substantial number of the persons providing substantially comparable services in the area of the person's immediately preceding employment, whichever is higher, or (2) less than the minimum wage rate prescribed in section 6(a)[(1)] of the Fair Labor Standards Act of 1938.

MINORITY VIEWS ON H.R. 7130

Although we do not oppose all of the objectives of the committee bill, and find ourselves in agreement with the principles embodied in a number of its provisions, we are convinced that the measure has several serious weaknesses and inequities which should be corrected.

The most glaring defects are in four legislative areas:

1. A differential minimum wage for young people seeking to enter the labor market, as a means of increasing the number of job opportunities available to them.
2. Restrictions placed on Public Employment agencies narrowing the scope of their authority to refer job-seekers to job openings.
3. Overtime coverage of state and local government employees.
4. Title III of the committee bill creating machinery and procedures designed to restrict foreign imports in certain circumstances, and which constitutes a drastic modification in the long-established international trade policies of the United States.

1. DIFFERENTIAL MINIMUM WAGE FOR YOUTH

The 1966 amendments to the Act included provisions (section 14 (b) and (c)) permitting the payment of wage rates below the applicable statutory minimum to full-time students for part-time work. This permission is narrowly limited in scope and subject to a number of rigorous prerequisites. The Act provides that:

1. The permissible wage may not be less than 85% of the otherwise applicable minimum.
2. The only non-farm occupations in which the lower student rate may be paid are those in retail or service establishments.
3. The full-time student may be paid the lower rate for not more than 20 hours of work per week except during school-vacation periods.
4. The number of full-time student hours which may be paid for at the lower rate is limited to a percentage of the work hours of the employer's total work force which percentage is the same as that which prevailed in the establishment during a preceding period (May, 1961 or September, 1966 as the case might be), or where records are not available to determine such previous ratios,

the same percentages for other similar establishments in the area during the designated periods.

5. As a condition for paying the lower rate, the Secretary of Labor must first issue a certificate for each such student employee indicating that the employer is compliying with the foregoing conditions and requirements. Moreover, prior to issuing the certificate the Secretary must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than students to be employed at the lower rate.

This program for broadening employment opportunities among our youth, has been wholly unsuccessful in securing a larger share of employment opportunities for young people which its sponsors professed as their fundamental objective. Actually, the red tape involved in an employer's securing the required certificate has apparently been so burdensome that a mere handful of employers have applied for them, and in any event, the scope of the opportunities provided, even if certificates were not required, is so narrow that few opportunities for youth employment are created thereby for the simple reason that all of American industry (outside of retail, service, and agriculture) is excluded from the program.

Nevertheless, despite their inhibiting limitations these provisions in the 1966 amendments clearly constituted a recognition by their sponsors that the problem of youth unemployment was a serious one that needed substantial remedial treatment. Developments since their enactment have demonstrated that the situation has become ever more serious and widespread and cries aloud for an effective solution.

The problem itself is one of long-standing. In 1930, the teenage unemployment rate was one and a half time as high as the total unemployment rate. By 1948, it was two and a half times as high. In 1963, it was three times as high, and by 1969 four times as high.

The most recent figures are not only shocking, but frightening in their social implications. The unadjusted jobless rate for teenagers has climbed to almost 20 percent. In the inner city poverty areas it has skyrocketed from 23 percent in the first quarter of 1971 to more than 28 percent in the second quarter. But for black teenagers in those areas, the extent and the increase of the unemployment rate is even more appalling—it rose from 34 percent in the first quarter of 1971 to 39 percent in the second.

In the face of this ominous development, the committee bill replaces the existing wholly ineffective youth differential wage program with a program which even the most cursory glance reveals as equally ineffective. It retains most of the significant defects of the present law; to wit, it applies only to full-time students for part-time work, requires precertification by the Secretary of Labor, contains a potential limitation on the numbers which may be employed by each employer at the lower rate, and although it does not in specific terms limit such employment to retail, service, and agricultural occupations, it does so in fact by excluding from the program a long list of occupations. These include work in mines, factories, warehouses, storage, construction, longshoring, explosives, products containing explosives, plants storing the same, motor vehicle driving, logging, certain power driven machines, slaughtering, meat packing, bakery machines, brick and tile

factories, wrecking, demolition, roofing, excavation, etc. and other occupations determined by the Secretary to be hazardous for students.

Ever since the adoption of the Fair Labor Standards Act in 1938, it has been the reiterated contention of virtually all federal government agencies that a national minimum wage and the periodic increases therein have had no adverse effect on employment. Until quite recently nothing or very little was ever said by them about the possible inflationary consequences of increases in the minimum wage.

The first break-through in the contrary direction appeared, rather modestly, in a brief comment contained in the last annual report to former President Johnson by his Council of Economic Advisers released in January 1969. This comment reads as follows:

> Minimum wage laws protect the worker against the imperfections of the labor market which lead to substandard wages. Such laws may also encourage the more efficient use of labor. *Although increases in the minimum wage are likely to be reflected in higher prices*, society should be willing to pay the cost *if this is the best way to help low-wage workers.* Yet excessively rapid and general increases in the minimum can hurt these workers by curtailing their employment opportunities.
>
> Since 1956, the Federal minimum has gone up about in line with average hourly compensation, while coverage has progressively expanded to cover low-wage industries. *In considering the future rate of increase for minimum wages, careful scrutiny should be made of the possibility of adverse employment effects. The benefits of higher minimum should be weighed against alternative ways of helping low-wage workers.*" (emphasis supplied)

Here we have a clear recognition by the top economic authority in the previous administration that increases in the federal minimum wage can, and sometimes have had, inflationary as well as adverse employment results.

However, outside of the federal government, there have been independent studies, mainly by academic experts, which have concluded that increases in the federal minimum wage do have adverse effects on employment opportunities and particularly among teenage job applicants.[1] The conclusion of the Kosters-Welch study is so significant as to merit direct quotation:

> Our evidence indicates that increases in the effective minimum wage over the period 1954–1968 have had a significant impact on employment patterns. Minimum wage legislation has had the effect of decreasing the share of normal employment and increasing vulnerability to cyclical changes in employment for the group most 'marginal' to the work force * * * teenagers. Thus as a result of increased minimum wages, teenagers are able to obtain fewer jobs during periods of nor-

[1] "The Effects of Minimum Wages on the Distribution of Changes in Aggregate Employment", by Marvin Kosters and Finis Welch, prepared by the Rand Corp. for the Office of Economic Opportunity, September 1970. See also "Minimum Wages, Factor Substitution and the Marginal Producer" by David E. Kaun of the University of Pittsburgh, Quarterly Journal of Economics, August 1965; "Employment Effects of Minimum Wage Rates", Profs. John M. Peterson and Charles T. Stewart, Jr., American Enterprise Institute for Public Policy Research, August 1969; and "The Effect of Statutory Minimum Wage Increases on Teen-Age Employment" by Prof. Yale Brozen (University of Chicago), in Journal of Law and Economics, April 1969.

mal growth and their jobs are less secure in the face of short term employment changes.

Minimum wage legislation has undoubtedly resulted in higher wages for some of the relatively low productivity workers who were able to attain employment than these workers would have received in its absence. The cost in terms of lost employment opportunities and cyclical vulnerability of jobs, however, has apparently been borne most heavily by teenagers. And a disproportionate share of these unfavorable employment effects appear to have occurred to non-white teenagers. The primary beneficiaries of the shifts in the pattern of employment shares occasioned by minimum wage increases were adults, and among adults, particularly white adult males.

Other eminent economists have observed similar developments. Thus, Professor Arthur F. Burns, now Chairman of the Federal Reserve Board, wrote in his book "The Management of Prosperity":

> The ratio of the unemployment rate of teenagers to that of male adults was invariably higher during the six months following an increase of the minimum wage than it was in the preceding half year."

And Professor Paul A. Samuelson of the Massachusetts Institute of Technology is quoted in the "Nation's Business" for September 1971 as follows:

> What good does it do to a black youth to know that an employer must pay him $1.60 an hour—or $2.00, if the fact that he must be paid that amount is what keeps him from getting a job.

There can be no question that a permissible lower minimum wage for youth will have the effect of inducing many employers to hire more young workers. Generally, the latter possess few or no marketable skills, are lacking in work experience which develops indispensable work habits, need more supervision, and require some degree of training, at least initially. These additional costs to the employer coupled with the requirement of paying the full minimum wage make it far more economic for employers to hire older and better qualified workers instead. Experience where youth differential wages have been paid confirms these observations. A number of industrialized countries in Europe (as well as Japan) do provide for a lower wage rate for young workers, and in those countries, the unemployment rate among the youth is not significantly greater than among the older workers who must be paid the higher rate.

The fact that the labor movement is opposed to permitting a lower minimum wage for young workers, itself demonstrates a belief that such a differential would result in more jobs for youngsters. If the labor movement did not so believe, there would be no discernible reason for its opposition to a minimum wage differential.

As we have pointed out, the provision for a lower minimum rate in the committee bill would do little or nothing to help in securing any significant number of jobs for our unemployed youth.

First of all, it is limited to part-time jobs of which there are relatively few. Moreover, even the supply of these would be further diminished because of the limitation on the number of students whom

each employer may pay at the lower minimum rate. Moreover, the certification requirements with their accompanying red tape which each employer must meet as a condition of securing a certificate permitting the payment of the lower rate would have the same effect of discouraging employers from applying for certificates as prevails under the youth differential provisions of the existing law. And finally, payment at the youth rate would be prohibited in a vast segment of the American economy, with the remaining segment extending very little beyond the "retail and service" sector to which the lower youth rates are confined under the ineffectual existing law.

But equally, and probably even more important than the extremely small number of youth jobs which the committee bill would open up, is the limitation that only full-time students (in part-time jobs) may be paid the lower rate. Unemployment among full-time students is not "the heart of the matter." Full-time students seeking work do not make up the great bulk of the young people who virtually spend all day loitering on the streets of the inner city, and whose joblessness has become one of the gravest social problems of our time. We need not repeat here, what has been repeated almost *ad nauseam* during recent years, the reasons for the ominous implications of this vast body of jobless youngsters concentrated in the slum areas of our major cities.

As we have pointed out, the rate of unemployment among black youth is far higher than among the nonblacks. In this connection, it is sufficient to quote the conclusions in a 1971 task force report entitled "Youth Unemployment: Crisis in the Cities," issued by the Twentieth Century Fund:

> More young people will enter the job market in the decade ahead, and they will represent a higher proportion of all new entrants than they did in the past. Teen-agers among blacks and other minority groups will increase from about 2.1 million in 1970 to 2.6 million in 1980—a gain of 24 percent.
>
> Only at the gravest peril to our society can the American people continue to ignore the growing frustration, despair and hostility that characterize more and more young black people. After a childhood and adolescence stunted by deprivation, rejection and neglect, these young people want the opportunity to support themselves and live useful lives.

We do not deny that many full-time students encounter serious financial problems in their attempts to complete their education, and that more job opportunities should be available to them to help them in reaching that goal. And in recognition of that need we support making the differential minimum wage program applicable to them. But the provisions in the committee bill allegedly designed for that purpose are, as we have pointed out, so restricted that they will prove no more helpful than the provisions they replace in the present law.

We favor unlimited access to employment in all segments of our economy to full-time students under the age of 21, with no discouraging certification procedures attached. We do not even see the need for limiting these opportunities to part-time jobs for the simple reason that the overwhelming majority of full-time students could scarcely hold a full-time job and simultaneously cope successfully with their

school studies. In the rare situation where the need of the student is so great that he feels that he must have a full-time job in order to continue his education, and that he can manage his studies successfully while holding such a job, we see no reason for prohibiting him from doing so. This limitation in the committee bill obviously is not designed to protect the student—its purpose is clearly to throw an obstacle in the way of his getting a full-time job because the limitation applies only if he is to receive the low youth minimum rate. If the employer is willing to pay him the applicable higher regular minimum rate, then the apparent concern for the well-being of the full-time student vanishes and there is no legislative barrier to his being so employed, even if he should choose to work long hours of overtime at the regular higher minimum rate.

But what is most absurd about the provision in the committee bill is its exclusion from the permission to pay the lower youth minimum of a long list of occupations, allegedly on the ground that they are hazardous for students.[2] A full-time student, 19 years of age for example, is endangering his own safety or health if he works in one of these occupations at the lower rate, but his work miraculously ceases to be hazardous if he is paid the higher regular minimum wage. The absurdity is so evident, that the professed concern for the health and safety of the student can only be regarded as a device to conceal its real purpose, which is substantially to deny not only full-time but even part-time jobs to unemployed youth. The more one examines the youth differential wage provisions in the committee bill, the more difficult it becomes to believe that helping unemployed youngsters get jobs was even a minor consideration in the inclusion of these provisions.

Under the Fair Labor Standards Act as presently written there are provisions limiting, and in many instances completely prohibiting, the use of child labor by employers to whom the Act applies (see sections 3 (1) and (12)) of the Act. These sections prohibit (1) the employment of children under 16, and (2) of children between the ages of 16 and 18 in any occupation found by the Secretary of Labor to be particularly hazardous for children between such ages. However, the Secretary may permit employment of children between 14 and 16 except in mining and manufacturing if and to the extent that he determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

Now it is interesting to note that the list of occupations enumerated in the committee bill and in which payment of the lower youth wage is prohibited, is lifted almost verbatim from the regulations listing the occupations which the Secretary of Labor has found to be hazardous to children (there is no mention of students) and in which the employment of children is completely prohibited. Inasmuch as the committee bill places no age limit on the full-time students who may be paid the lower minimum wage, the result is another absurdity, to wit, that a full-time student over the age of 18, even a graduate student aged 23, 24, 25 or even older, is prohibited from performing in jobs which are determined by the Secretary of Labor to be hazardous only for chil-

[2] There is nothing in the bill to indicate why certain occupations may be hazardous for students but not for nonstudents. The lack of rationality in this distinction becomes obvious when compared to such distinctions based on age, sex, physical health, etc.

dren under 18, but which apparently cease to be hazardous for a full-time student if the applicable regular minimum and not the lower youth minimum is being paid to such student. However, the committee bill specifically retains the existing prohibitions on the employment of child labor (as does our own counter-proposal), although the language of the committee bill treats full-time students as adults if they are paid the full minimum wage but as children if they receive the lower youth minimum, and this without regard to their actual age.

If it is assumed despite appearances that there is some degree of rationality in the committee's provisions on a youth differential wage rate, it must be sought not in the provisions themselves but in their inevitable effects which obviously reflect their purpose. These seem to be to make it as difficult as possible for young people to secure not only full-time jobs but part-time employment as well.

Our counterproposal, as noted above, permits payment of the lower youth minimum to full-time students under the age of 21, with no limitation to part-time jobs only, no restrictions on type of occupation (except as prohibited or restricted by the applicable child labor laws), no limitation on the number which an employer may employ at the lower youth rate, and with no requirements of governmental certification and the inevitable burdensome red tape which always accompanies official certification requirements. But even this proposal, which is both liberal and realistic, deals with only a part of the youth unemployment problem. Full-time students seeking work are far fewer in number than the many thousands of jobless youngsters who inhabit the poverty areas of the inner city. A large proportion of these youngsters are black; a sizable segment belongs to other minority ethnic groups.

The overwhelming majority of these young people, frequently frustrated, desperate and hostile, have ceased to be students and most of them have no intention of continuing or resuming their education. They constitute the category so often referred to as "drop outs," who need jobs, who in the words of the Twentieth Century Fund report quoted above "want the opportunity to support themselves and live useful lives."

The committee bill ignores them completely. It is precisely these youngsters whom it is most difficult to induce employers to hire, who are most in need of being hired. Every legitimate inducement which will encourage employers to give them jobs must be invoked. The other more important part of our counterproposal, therefore, includes a provision permitting employers to employ any youngster under the age of 18 at the lower minimum wage rate for youth if the employment is not forbidden by the applicable child labor laws. The non-student status of such youngsters is immaterial.

The only other condition attached to our counterproposal for a youth wage differential for youth under 18 and students under 21 is that the Secretary of Labor promulgate regulations to insure that these differential youth wage hirings will not create a substantial probability of reducing full-time employment opportunities for workers and job seekers who are neither young people under 18 or full-time students under 21.

Hence, we intend to offer on the floor our counterproposal on the youth differential minimum wage in the form of an amendment which will read as follows:

> Notwithstanding the minimum wage rates prescribed by subsection 6(a)(1) of the Fair Labor Standards Act of 1938, but in compliance with applicable child labor laws, any employee to whom such subsection otherwise applies, and who is (1) under the age of 18, or (2) a full-time student under the age of 21, shall be paid not less than 85 per centum of the otherwise applicable wage rate prescribed by such subsection or not less than $1.60 per hour, whichever is the higher. The Secretary shall by regulation prescribe standards and requirements to insure that the foregoing provisions will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rates authorized by this subsection are applicable.

We hope that our amendment will be adopted. In approving it, Congress will be providing at least one effective weapon against youth unemployment and the terrible consequences resulting therefrom not only to our unemployed youth but to our society itself.

2. RESTRICTIONS ON EMPLOYMENT REFERRALS BY PUBLIC EMPLOYMENT SERVICE AGENCIES

A little discussed but quite controversial provision contained in the committee bill would restrict the use of public employment agencies (and their placement and job referral functions) to employers *paying the minimum wage*. The provision referred to states:

> SEC. 213. No public employment service agency may assist in the placement of any individual (other than an individual with respect to whose employment section 14 applies)[3] with an employer who will pay such individual at a wage rate less than the wage rate prescribed in this bill.

It is clear, therefore, that the provision in question would bar the use of the employment agencies even by an employer *who is not legally required* to pay the minimum wage. Enactment of such a provision would not only be a retrogressive step but would be highly inequitable.

The inequitable nature of the provision.—The inequitable nature of the provision—in fact, its very absurdity—is emphasized by the fact that in restricting the use of public service employment agencies, it also penalizes the law-abiding employer, discriminates against the small employer, aggravates the jobless plight of our youth and our veterans, all without justification.

Penalizing the law-abiding.—This provision is blatantly reprehensible because it penalizes an employer not because he failed to conform with the applicable provisions of the law but because he happens to be a non-covered or small employer not required by law to pay the minimum wage. Even covered employers who are found to be other-

[3] Sec. 14 refers to learners, apprentices, students and handicapped workers.

wise in violation of the Act are not barred from utilizing the services of the public employment agencies.

Detrimental effects on Youth and Veterans.—As noted previously in this report, the committee bill, by its failure to provide for an adequate youth wage differential, is ignoring the plight of our jobless youth. Enactment of this provision can only aggravate their plight because it will effectively close off another avenue of potential jobs. It is common practice for small employers to employ substantial numbers of youths in the retail and service trades. Enactment of this provision can only make it more difficult for youths in obtaining such jobs.

There is ever-increasing emphasis on the unemployment plight of still another segment of our society, the Vietnam veteran. Early in 1971, the unemployment rate among Vietnam veterans had reached 15% with even higher figures for veterans from minority groups. The Administration has sponsored a number of programs aimed at getting jobs for veterans and this Congress recently enacted the Emergency Employment Act of 1971 which gave "special consideration" for employment to veterans. It would be strikingly inconsistent for members of this House now to support a provision that would curtail job access and job placement for veterans.

Discrimination against the small employer.—The effect of such provision is to discriminate against the small emp'oyer by denying him access to placement and referral functions while granting such access to the large employer. This inequity is further heightened by the fact that the large employer usually has his own personnel program and the public employment service merely supplements his own hiring and recruiting programs. Conversely, the small employer is more likely to rely on the public employment agency as a manpower source.

This provision is also inequitable to other individuals seeking work because it may well deny them information about and access to approximately 7 million jobs. The Department of Labor estimates that there are approximately 8,455,000 jobs (7.8 million non-agricultural and 655,000 agricultural) which are not currently covered by the Act. Discounting the additional coverage brought about by this bill, approximately 7 million jobs will be foreclosed from entering the public employment agency channels.

Another practical objection to such provision is the fact that individuals receiving unemployment compensation are normally required to report periodically to their employment service to check whether employment is available for which they are qualified. If no employment is available their qualification for unemployment benefits continues. If this provision were enacted, a substantial job source would be eliminated. This might necessitate the imposition of a requirement that such an individual be required to do additional job-hunting in areas and among employers not covered by minimum wage. If no additional requirement were made then it could result in keeping an individual on unemployment compensation for a longer period with a resultant increase in cost to both the federal and state governments.

The real purpose of the provision.—It seems apparent that the real purpose of such provision is to force employers, regardless of size or type of operation, or of non-coverage or exemption, to pay the mini-

mum wage for the right to use the services of the agency. If the majority wants to achieve that result, it would be more honest to do so directly and not in the backhanded and questionable manner exemplified by this provision.

In our view steps should be taken to *maximize* the use of public service employment agencies and not restrict their use. It seems inconceivable to us that members of the House would support such a provision which flies in the face of other legislative programs enacted by the Congress (the Emergency Employment Act, the extension of the myriad of programs under the Economic Opportunity Act and various manpower and training programs enacted since 1962) aimed at training and expanding our pool of trained manpower. Adoption of the Committee provision would undercut and limit the effectiveness and objectives of such legislation because it would deny to potential employers and employees information as to what employees or jobs were available.

At a time when the unemployment rate is relatively high and the efforts of the Administration and the Congress are aimed at reviving the nation's economy through the creation of jobs and the reduction of unemployment, the proposed restriction on the use of public employment service agencies can only be characterized as ill-conceived, ill-timed, and illogical as well as unjust. We are confident that members of the House will support an amendment striking such provision from the bill.

3. OVERTIME FOR STATE AND LOCAL PUBLIC EMPLOYEES

When the General Labor Subcommittee reported H.R. 7130 to the full committee, it included therein a provision exempting from the overtime requirements of the Act, state and local public employees. Thus, coverage had been extended to the latter with respect to the minimum wage only. The committee bill as reported covers state and local public employees for overtime as well, except for those who are "engaged in fire protection or law enforcement activities".

The decision by the subcommittee to exclude all state and local public employees from overtime was based on the most serious of considerations and arrived at after extensive discussion among the subcommittee members. It was generally recognized by them that the budgetary and fiscal condition of most state governments as well as the overwhelming majority of local governments was dangerously weak. Any increase in their financial burdens would be exceedingly difficult for them to bear. Nevertheless, it was agreed by the majority of the subcommittee that the total number of state and local public employees throughout the entire country except for a tiny handful were already receiving at least $1.80 an hour which is what the bill, if enacted, would require them to be paid, and hence, application of that minimum to such employees would have little financial impact on state and local governments.

However, it was also recognized that the overtime requirement of one and one half times the regular hourly rate of pay, regardless of how high that rate was (except perhaps for a very small number in supervisory, executive or professional positions who would probably be exempt from the requirement), would be applicable to the vast majority of such employees, many of whom, although they presently are

paid for overtime work, generally receive it at their regular hourly rate of pay, and not at a higher premium rate.

When the Act was originally adopted in 1938, the legislative history clearly indicates that the purpose of the higher overtime rate was designed to discourage employers from requiring their employees to work overtime. Affirmatively, it was expected, or at least hoped, that rather than pay the higher overtime rate, employers would hire additional workers at the regular rate instead, thus providing additional jobs for some of the jobless who numbered many millions at that period in the midst of the Great Depression.

It is plain to see that governmental employers are not as free to hire additional employees whenever additional work beyond the normal work time is required.[4] Governmental hiring, at all levels, is governed by law, and is limited by legislated budgets. Consequently, the requirement to pay premium rates for overtime may well result in the loss of jobs for state and local employees after the overtime work has been completed in order to permit the agency to keep within its budgetary limits. Thus, the basic purpose of the premium overtime pay required by the Act is, practically speaking, entirely inapplicable to state and local public employment—it would not result in creating a single additional permanent job—instead it probably would, given the present financial problems of the states and localities, result in a loss of jobs.

In a sense, the reported committee bill, itself recognizes this. Why else should the exemption from overtime be extended to firemen and the police? We must assume that their exemption is based on the realization that they are required to work a considerable amount of overtime, and that the financial burden of higher premium overtime pay would be fiscally intolerable for most states and localities. But there are very few public services which may not at times, and certainly during emergencies, require their employees to work overtime. Snow removal, garbage collection and sanitation, public health activities, public transport where it is publicly owned, public welfare, schools—these are just a few among many state and local government activities which often require their employees to work beyond the normal work period.

We strongly believe that requiring state and local government agencies to pay the higher overtime rate jeopardizes the continued effective exercise of these indispensable functions. We therefore strongly urge that the committee bill be amended to restore the overtime exemption for *all* state and local public employees.

4. TITLE III—RESTRICTIONS ON FOREIGN IMPORTS

We are especially concerned about Title III of H.R. 7130. These provisions should not be enacted. The implementation of Title III would not serve the best interests of the American worker, nor of the country.

Title III would amend section 4(e) of the Fair Labor Standards Act to, in effect, authorize the Secretary of Labor to recommend, and

[4] It should be noted that during the hearings which resulted in the 1966 amendments, then Secretary of Labor Wirtz strongly urged double time instead of time and a half for overtime as a means of creating additional jobs. Nevertheless, the subcommittee, after hearing the testimony of the very large employers, concluded that very few additional jobs would result and dropped the proposal from further consideration.

authorize the President to impose, higher tariffs or import quotas on competitive imports produced abroad under working conditions below U.S. minimum standards. This new grant of authority would be sweeping. Only a fraction of foreign labor enjoys wages and working conditions comparable to the minimum standards specified under the Fair Labor Standards Act.

We note that the AFL–CIO has taken the position that this kind of issue should be handled separately from the basic amendments to the Fair Labor Standards Act.

The amendment to section 4(e) focuses solely on comparative labor standards as the basis for competition in international trade. This is a very limited approach, since labor standards represent only one factor in international trade competition. Such other factors as skill of management and worker productivity, costs of capital, and costs of raw materials help to determine costs of production. Dealing only with the effects of labor standards on international trade competition is at best piecemeal. The problem is more appropriately dealt with under broader trade programs and policies.

The proposed amendments could lead to a drastic reduction in imports. The net effect of any broad-scale restriction on our imports could be to reduce rather than increase employment opportunities in our country. Other countries are likely to retaliate by taking countermeasures against U.S. exports. Moreover, many foreign countries' ability to purchase U.S. goods and services depend mainly on their ability to sell goods and services to the United States. Thus, these countries would lose the purchasing power with which they now buy American exports.

The President already has broad powers under existing legislation to curtail imports which adversely affect American industry and labor, including the adjustment assistance and escape clause provisions of the Trade Expansion Act of 1962, the Antidumping Act of 1921, and various provisions in the Agricultural Adjustment Act of 1933, the Agricultural Act of 1956, and the Tariff Act of 1930. Further, the Administration has proposed liberalizing the adjustment assistance and escape clause procedures so that industries, workers, and firms can be better protected from injury.

A better approach to the problem of low-wage competition is to work with other countries to develop international fair labor standards. Efforts have previously been made to get the issue of international fair labor standards under active consideration in appropriate international forums—i.e., General Agreement on Tariffs and Trade (GATT), the Organization for Economic Cooperation and Development (OECD), the International Labor Organization (ILO), and the United Nations Commission on Trade and Development (UNCTAD).

Title III of the bill would add an additional paragraph 4(f), to require foreign manufacturers and suppliers furnishing materials, supplies, or equipment under a domestic public contract which exceeds $10,000 to (1) provide their employees engaged in performing work in connection with the contract, terms and conditions which are not substantially less favorable than those required under the FLSA and (2) make such reports as are necessary to enable the contracting agency, or any other designated agency, to insure that the contractor complies with the required provisions of the contract.

The effect of section 4(f) would be to impose restrictions on government procurement and on any procurement financed in whole or in part by Federal funds of goods produced abroad under conditions less favorable than those specified in the FLSA. This represents an extreme form of "Buy America" legislation, which in effect would require that practically all Federal procurement be limited to U.S.-made products. The effects would be inflationary and would reduce or destroy competition in many fields where it may be needed.

The section 4(f) amendment would seriously jeopardize international efforts currently under way to reach agreement on a code of fair and equitable public procurement practices. One important objective of this effort has been to insure that U.S. exporters have the opportunity to compete for public procurement in other countries on the same basis as their foreign competitors.

Title III of the bill is neither an appropriate nor feasible approach to the problems. Not only would the provisions have an inflationary impact, in direct conflict with the objectives of the present domestic and international efforts of the United States, but in addition, the implementation of measures envisaged under Title III would bring into question internationally, our efforts to seek mutually satisfactory solutions regarding international trade, monetary exchange, and related areas.

CONCLUSION

On the floor we shall offer amendments designed to correct the shortcomings of the committee bill. It is our hope that most of our colleagues will recognize the validity of our critique and support our efforts. Should these prove successful the resulting measure will most certainly be more equitable in its treatment of all those who are directly affected by its provisions. But above all, we shall have refrained, at least in part, from creating a legislative program which can only stroke the flames of inflation, while doing little or nothing to help reduce unemployment among those of our people who are, proportionately, its most numerous victims.

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SEPARATE VIEWS OF MR. O'HARA

At the outset, let me say that these are not dissenting views. I think that H.R. 7130 is a good bill. While it embodies, as it must, many concessions to those who oppose any forward motion at all, it does represent a significant step forward for most of the working men and women of this nation.

As Chairman of the Subcommittee on Agricultural Labor of the Education and Labor Committee, I am gratified that the minimum wage floor for the people who feed and clothe us is to be raised by this bill from the present level of $1.30 to $1.50 in the first year, and to $1.70 in the second year. Farm workers are so used to being left behind whenever any social or economic legislation is enacted that any recognition at all is welcome.

But this does not alter the fact that this bill, however much it improves the actual situation, leaves intact the indefensible proposition that there must always be some gap between the agricultural minimum wage and the industrial minimum wage.

This bill raises the minimum payable to those farm workers who are actually covered by the Fair Labor Standards Act, though it does nothing to close the enormous loopholes which leave so many men, women and children—well over a half a million children—outside its protections. The raise involved is not an ungenerous one, and I think the men who developed this bill, fighting courageously against the enormous opposition of the Administration and the business community, were wholly sincere and wholly accurate in their belief that they simply could not increase the farm labor minimum wage by a greater raw figure than they increased the wage payable in other industries. The bill does raise the farm worker $.20 this year and $.20 next year, while the Administration's best offer would have only raised the floor by $.15 this year and $.15 next.

In any event, as between the viable alternatives, the Committee chose the better and more generous one, and is, I believe, to be commended for so doing.

But in spite of all this, logic and justice alike suggest that where the farm worker starts far behind the point where everyone else enters the race, it is not wholly convincing to tell him that "not widening the gap" is quite the same thing as "closing the gap."

Even in the complex mathematics of the Fair Labor Standards Act, adding $.40 to $1.30 doesn't come up to the same total as adding $.40 to $1.60. And the farm workers, uneducated as many of them are, and used to getting the short end of the stick as all of them are, fully understand that kind of mathematics. H.R. 7130, in short, does not give the farm worker the kind of equal treatment under the law to which justice entitles him. All it does is to leave him relatively no worse off.

I do not make these points because I intend to try to remedy these flaws on the House floor. We have been shown too often that the votes

aren't there to do that. But I do want to file these views to help rid us once and for all of a small part of the mythology that has grown up around the way the law treats the farm worker.

Just a few weeks ago, the Subcommittee on Agricultural Labor was holding a hearing on the radical proposition that 10 year olds ought not to be working in the fields just so we can eat cheaper artichokes.

The Administrator of the Wage and Hour Division of the Department of Labor testified on behalf of the Department, and made the following remarks with regard to that dangerous proposal:

> FLSA exemptions reflect areas in which Congress and previous Administrations agreed that economic considerations argued against providing minimum wage and overtime coverage. In the absence of definitive studies and evidence that would show why the earlier legislative determination to omit particular categories from coverage is no longer valid, we believe it would be unwise to tamper with these provisions.

Nonsense!

The Wage and Hour Administrator, in his very laudable effort to be kind to previous Congresses and previous Administrations, and to justify the position of this Administration, seeks to paint a picture of economists and other experts, perhaps working in the cloistered hush of the Bureau of Labor Statistics, carefully weighing the data and coming up with scientifically valid reasons for excluding farm workers from FLSA coverage. I think it is important, if only for the sake of public honesty, that we admit once and for all that isn't the way it's done. Farm workers are excluded from most social legislation, and given second-class treatment in the legislation that covers them because farm employers have more votes on the floor of the House than farm workers. And no amount of "definitive studies and evidence" has affected or will affect that process.

We are leaving the farm worker behind again in H.R. 7130 because his friends have not been loud enough or powerful enough to bring him into first-class citizenship in the "world of work". I share that guilt, as a Member of this Committee, and I will let my colleagues share it or not, as they may please. But let us not try to whitewash our prudential judgments by murmuring about "studies and evidence". The farm worker will gain real parity under the Fair Labor Standards Act—equality under the law, if you will, on that day when his friends are numerous enough in the House to prevail. I hope and believe that day will not be long delayed.

JAMES G. O'HARA.

INDIVIDUAL VIEWS OF REPRESENTATIVE MAZZOLI

Generally, I am in favor of increasing the Federal minimum wage standards and of extending the overtime hour coverage of the Fair Labor Standards Act. However, there are some provisions in the committee bill about which I have reservations.

This bill, as originally reported by the General Subcommittee on Labor, extended coverage of the Act to include State and local public employees with respect to the minimum wage only. The full Committee on Education and Labor adopted an amendment to bring State and local employees, except for those who are "engaged in fire protection or law enforcement activities", under the overtime provisions, as well.

I do not feel that the Congress should establish minimum wage and overtime standards for state and local government units. This extension of coverage is an unnecessary intrusion in local matters and can only add to the financial difficulties of the states, counties and cities of this nation. It is also inconsistent for Congress to add to the fiscal burdens of local governments without acting to provide some form of financial relief, such as revenue sharing.

At the very least, I believe that state and local governments should be exempt from the requirements specifying premium overtime pay. Because of the fixed budgets under which these governments operate, unexpected overtime payments might well force subsequent layoffs and reductions in employment. Also, I do not believe that Congress should impede or discourage these units of government from providing needed public services in times of emergency when massive overtime work is required.

I also seriously question Section 208 of the Committee bill which provides for the employment of full-time students, under 21 years of age, at the lower youth minimum wage-rate for part-time but not full-time employment. I believe the differential wage provisions should be extended to such students regardless of whether the job is full or only part time.

I further think there is little logic in the provision which denies young people employment in "hazardous" occupations at the speical student wage-rate, but would permit them to work in the same occupation so long as they are paid regular minimum wages. This simply does not make sense. If the job is really a hazard to life and limb, then, logically, no young person should be so employed regardless of the wages paid.

Also, I believe the special youth-differential wage-rate should be made applicable under certain conditions, to youths below the age of 18 who are not students. I would urge appropriate safeguards so that this wage-rate is not an inducement to teenagers to leave school prematurely. However, the fact of the matter is that in many of our cities, despite conscientious efforts to keep young people in school, there are considerable numbers of unemployed "drop-outs" whiling away their

days in non-constructive activity. For such youths, there is a crying need for job opportunities. Hopefully, the youth-differential wage-rate will provide such job opportunities.

The argument will be made that students and youths under the age of 18 should receive equal pay for equal work. But in view of the fact that such workers require additional training and supervision and in view of the critical need for job opportunities among this age group, I feel that the 85 per cent youth wage differential is fully justifiable.

In respect to this special pay rate, I would add the stipulation that the Secretary of Labor should be given authority to take action to prevent abuses or excesses in the utilization of the lower, youth wage-rate when such utilization would result in substantial reductions of job opportunities for older workers.

There is a further weakness in the Committee bill. I believe there is need for a provision granting greater flexibility in the number of hours per week which certain types of retail sales and managerial employees may work at regular pay. I am referring to a so-called "high-earners" provision, which would apply in limited circumstances to employees whose regular hourly-wage rate is no less than twice the applicable minimum wage scale.

I have joined with my colleague Mr. Steiger of Wisconsin in Additional Views, elsewhere in this Report, which treat this subject at length. I would have preferred a broader exemption for high-earners, but even this limited exemption will provide some relief.

Finally, I generally concur with Section 2 of the Minority Views regarding the punitive sanctions contained in the Committee Bill on Public Employment agencies. This section should be deleted from H.R. 7130.

ROMANO L. MAZZOLI, M.C.

ADDITIONAL VIEWS OF MR. QUIE, MR. ERLENBORN, MR. ESCH, MR. ESHLEMAN, MR. STEIGER OF WISCONSIN, MR. LANDGREBE, MR. FORSYTHE, MR. KEMP AND MR. MAZZOLI

The Fair Labor Standards Act presently provides an exemption from overtime pay provision (Section 7(i)) which is applicable to employees of retail and service establishments that have a "regular rate of pay" in excess of 1½ times the minimum wage rate and where more than half of the employee's compensation represents commissions on goods and services. Large stores, because of their high volume of business and generally commission form of compensation, are thus able to exempt sales people from overtime provisions during the seasonal peaks of activity. Smaller stores, however, such as men's wear stores, frequently pay their employees a guaranteed weekly salary or a salary plus a small commission. This means that sales personnel in smaller stores doing the same job in similar circumstances, who frequently have greater earnings on a regular basis, may not be entitled to an exemption from the premium overtime provisions. Such a disparity unreasonably discriminates against the small businessman in favor of the large stores.

A more equitable basis for exemption would be based on the total dollars earned by the sales people rather than on the method of payment. The bill as originally introduced by Congressman Dent provided for an exemption of the penalty overtime provisions for not more than 7 weeks in any calendar year if 1) the employee involved is employed in a bona fide sales capacity or as manager of the establishment, and 2) such employee's regular rate of pay is *not less than twice* the applicable minimum wage, and 3) any employment in excess of 48 hours in a work week will be paid for at a rate not less than 1½ times the regular rate of pay.

This simple solution makes available to smaller employers their most qualified sales people during their peak seven weeks of the year . . . and only during a seven week period. It only applies to the first eight hours worked in any week beyond 40, and it *does* require the regular rate to be at least twice the applicable legal minimum. Only 56 hours of exempted overtime work in any one year would be available to employees who qualify. We urge our colleagues to support this relatively minor change at the time it is offered on the floor in order to restore equitable treatment for the small businessman.

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ADDITIONAL VIEWS OF MR. QUIE, MR. ERLENBORN, MR. ESCH, MR. ESHLEMAN, MR. STEIGER OF WISCONSIN, MR. LANDGREBE, MR. FORSYTHE, MR. KEMP, AND MR. BIAGGI

The bill would phase out the partial overtime exemption for employees of the regulated local transit companies and would repeal the exemption entirely on January 1, 1974. We think this exemption should be retained because of the unusual conditions existing in public transit employment. The hours of employment cannot be made uniform because of factors not subject to the control of the employer such as public demand and street and weather conditions. Imposition of the 40 hour week overtime standard would result in increased operating costs at a time when there is ample documentation that gross revenues are down and operating losses are up. Further financial stress is likely in many areas to result in fare increases or reductions in service. For those that depend on public transportation, the repeal of this exemption could cause real hardship.

Statements during the Subcommittee hearings fully illustrated the necessity of continuing the present exemvption. Since 1954, 258 bus systems have collapsed and approximately 114 cities are without public transportation service. In 1970 alone, the transit industry lost $332 million. Practically every bus system in the country with a $250,000 annual gross has a collective bargaining agreement with a union adequately covering the unique working conditions of the industry. In fact, the average wage for operating employees is now over $4.00 per hour.

Public transit's dire need was recognized by the passage last year of the $3.1 billion Urban Mass Transportation Act of 1970. It would seem paradoxical and regrettable to now impose an additional financial burden on literally hundreds of transit systems and thereby face the loss of service to those who can least afford it: the needy, the aged, the young, and the handicapped.

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JOHN ERLENBORN, M.C.
MARVIN L. ESCH, M.C.
EDWIN D. ESHLEMAN, M.C.
WILLIAM A. STEIGER, M.C.
EARL F. LANDGREBE, M.C.
EDWIN B. FORSYTHE, M.C.
JACK KEMP, M.C.
MARIO BIAGGI, M.C.

INDIVIDUAL VIEWS OF MR. ASHBROOK

I concur with many of the objections voiced in the minority views and the separate views expressed by members of the minority. In addition, I oppose some provisions in the Committee bill to which no members of the minority have expressed dissent.

Once more we see that legislation approved by the Committee on Education and Labor is an exercise in futility. Again we will be confronted with rewriting an entire bill on the House floor.

JOHN M. ASHBROOK.

INDIVIDUAL VIEWS OF MR. BELL

I am opposed to Title III of the bill as reported for the reasons set forth in the Minority Views and in the individual views of Mr. Reid of New York.

ALPHONSO BELL, M.C.

69-982 O—71——8

INDIVIDUAL VIEWS OF MR. REID OF NEW YORK

Although I support increasing and extending the minimum wage as recommended in this legislation, I strongly oppose Title III of the bill, relating to imports. This is a highly protectionist section and an extreme form of "Buy American," which could invite a trade war, isolate the U.S. from foreign markets, and seriously hurt the American worker.

The first portion of Title III would, in effect, require the Secretary of Labor to recommend, and authorize the President to impose, higher tariffs or import quotas on competitive imports produced abroad under working conditions below the U.S. minimum standards which threaten to impair the "economic welfare" of some community of workers in the United States.

The second portion of the Title, Section 301(f), would impose restrictions on government procurement (or any procurement which is federally aided) of goods produced abroad under working conditions less favorable than those specified in the Fair Labor Standards Act. In other words, since no country except Canada has such standards, virtually all federally aided procurement under Sec. 301(f) would be limited to U.S.-made products.

To me, both of these provisions represent the theme of "Buy American" at its most extreme, since most procurement would have to be U.S.-made. Not only would this Title be inflationary and non-competitive, it could also severely limit the opportunities for private U.S. firms overseas to compete for public procurement in other countries on the same basis as their foreign competitors.

I object to these provisions not only because I believe generally that a free trade policy will help our economy more than a protectionist one through expanding our GNP and our tax base, but also because I believe specifically that protectionism, which would inevitably bring retaliatory measures by other nations, would injure American labor immediately as well as in the long run.

The following dangers could become realistics if Title III were passed, and must be closely considered:

1. Since there are more export-related jobs than there are import-affected jobs, a protectionist policy with retaliation by foreign countries could severely limit our exports and affect as many as 2.7 million American workers in export jobs.[1]

[1] The Bureau of Labor Statistics has noted that there were approximately 2.7 million American workers whose jobs depended directly and indirectly on exports in 1969. This estimate includes the direct employment which produced the exported goods, and also the indirect labor necessary for all supplies and services in the exported item, plus transportation and handling jobs. The BLS also estimated that if we had attempted to produce domestically products which are now being imported competitively into this country in 1969, we would have needed 2.5 million additional workers.

This sounds, at first glance, like 2½ million empty jobs to fill with our unemployed. But American trade, and American jobs, do not operate in a vacuum. If our trading partners retaliated, many if not all of our 2.7 million export-related jobs would be lost.

This excess of export-related jobs over import-related jobs is true even at the present time, when our trade balance is negative. It is even more true at other times, when our trade balance is positive, and when the difference between export jobs and import jobs is as much as 700,000 jobs.

Secretary of Labor Hodgson has noted that the implementation of Title III "would not serve the best interests of the U.S. and American workers:" He has stated that "the net effect of any broadsale restriction on our imports could be to reduce rather than increase employment opportunities in the U.S." (See appendix A for text of letter.)

At present, excluding Canada whose labor conditions are similar to ours and who would therefore not be subject to Title III, our three largest trading partners are Japan, Germany and the United Kingdom.

An analysis of the "Overseas Business Reports" (July 1971) published by the Department of Commerce reveals that if these three conutries retaliated through GATT (General Agreement on Tariffs and Trade), or even some through the Common Market, or through informal pressures, to reduce American imports, the American workers most affected could be, in general, those involved in both electric and nonelectric machinery, transport equipment and agriculture, or, to put it another way, those who in many cases are already suffering from the effects of the national economic slump.[2] (See appendix B for trade tables)

2. American agriculture would be devastated by reciprocal quotas imposed by foreign countries.

The agricultural produce from one out of every four acres is exported. This alone indicates what retaliatory actions could do to our farmers.

We exported over $1 billion in agricultural commodities to Japan in 1970, a large portion of which was wheat and corn. If Japan retaliated to a U.S. protectionist policy, or if Japan's purchasing power had become so reduced as to preclude their buying of our agricultural products, not only would our farmers be hurt, but also, the costs to the American taxpayer for storing agricultural surpluses, etc., would increase. The same would be true, of course, if European Common Market nations retaliated, by replacing U.S. wheat and soybean exports with Canadian or Australian exports.

3. Many of our trading partners, unable to sell to the U.S., would thus be unable to earn the necessary foreign exchange to purchase our exports, again threatening our export-related jobs. Take Japan, for instance, our second largest trading partner. Last year we exported $4.652 billion worth of goods to Japan. We imported almost $5.875 billion worth of Japanese goods, thus averaging a deficit of $1.2 billion. If we refused to import a significant portion of that $6 billion, which would be the case under Title III, Japan's net purchasing power would

[2] At the present time, for instance, Japan's largest American imports are electric computers and parts, civilian aircraft, inedible crude material other than fuel (such as soybeans, softwood logs and iron and steel scrap), and agricultural food products including corn and wheat.

Germany's largest American imports are agricultural machinery, civilian aircraft, agricultural food products, and crude material other than fuels.

Finally, the United Kingdom's largest imports are electrical apparatus, civilian aircraft, agricultural food products, and paper.

In all of these areas the U.S. exports significantly more than it imports. If, therefore, any or all of these countries retaliated, U.S. farmers and workers would be severely affected.

vastly decrease and Japan would be unable to purchase the almost $5 billion worth of U.S. goods we want to export. Not only, then, would this protectionist policy seriously affect Japan's economy; equally, it would affect our own exports because we would take away Japan's ability, let alone interest, in buying them.

4. The American consumer would be the loser, since reduced competition within the U.S. could produce both higher prices and lower quality.

There are 80 million workers in this country. They are all consumers. Competition is vital in a free enterprise economy to keep prices down and both consumer demand and quality up. As inflation takes its course, American products abroad will become less competitive, and our exports trade will suffer accordingly.

5. Title III would seriously jeopardize international efforts presently underway on trade and procurement practices, and would violate GATT.

Multilateral and bilateral negotiations are presently underway with a number of countries, including the Group of Ten, on the realignment of exchange rates, the surcharge, international liquidity and appropriate reserve instruments including special drawing rights and other reforms of the International Monetary Fund system, and on a number of other matters, with a view toward opening up markets for U.S. exports.

Further, title III in my view violates not only the spirit and the intent of GATT, but also the very letter of the agreements. First of all, under Article I,[3] all contracting parties are to be treated equally without discrimination or preference. Surely, however, under Title III, Canada's treatment certainly is preferential to that which Japan has in store.

Additionally, GATT requires the payment of compensation by any country which raises its tariffs unilaterally to those countries which are affected, either in terms of a direct payment or in terms of lifting duties on some other product which would help the countries affected. Title III makes no such provision.

Finally, the spirit of GATT recognizes that hardships may occur to some communities due to imports, but urges the use of internal measures rather than tariffs or quotas to remedy the situation.

At this time when our credibility, let alone our popularity, is not high overseas, I think it would be unwise to break any solemn international agreements to which we are a party, let alone to sabotage those efforts presently underway.

6. In sum, we cannot export unemployment, and there must be a thoughtful national dialogue as to domestic, diplomatic and economic measures we can take as an alternative to protectionist legislation.

Our jobs gain more from exports, the figures reveal, than they lose from imports, and when we consider the trade war we could find ourselves in, protectionism is dangerous in the short run and could be devastating in the long run.

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[3] GATT's article I says in part "* * * any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

This is not to say that certain communities will not suffer from imports. Some will, and they should not be made to bear the brunt of the nation's trade policy. But neither should they control the direction of our trade policy and jeopardize the whole economy, or the whole labor market, by the writing of bad law in violation of international agreements.

There are mounting pressures in some areas of U.S. labor for "Buy American" and protectionist legislation. Accordingly, it is vital that there be a thoughtful national dialogue on this question and on viable alternatives to a policy of narrow economic nationalism. This will require both the Congress and the Executive, in concert with labor and management, to exert national leadership as to the problem and its remedies.

Diplomatically, there is much more we can do in the spirit of the initial Kennedy Round to open markets to U.S. goods and services.

Economically, we must remove the surcharge before we invite economic retaliation, consonant with our international agreements, including GATT.

Domestically, we should consider trade adjustment assistance legislation that will involve job training, tax incentives, and emergency subsidies to effect necessary transitions in humanitarian and economic terms.

American labor must show some leadership that in recent years has been lacking to work with other countries, either bilaterally or with international forums such as the ILO and the Organization for Economic Cooperation and Development (OECD), to develop international fair labor standards.

Finally, rather than return to the Smoot-Hawley era of high protectionism, we must control inflation, encourage greater productivity and competitiveness for U.S. products through fiscal, monetary and international trade policies promoting real growth in our GNP and in our overseas trade.

During mark-up of this bill in full Committee, I moved to strike Title III. The motion failed by a non-partisan vote of 16–19. I intend to do what I can when this legislation reaches the Floor of the House to eliminate the protectionist features of this otherwise valuable legislation.

OGDEN R. REID.

APPENDIX A

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, October 19, 1971.

Hon. OGDEN REID,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN REID: This is in response to your request for my views on Title III of H.R. 7130, a bill to amend the Fair Labor Standards Act of 1938.

Title III of H.R. 7130 deals with the question of the impact of imports on employment. As I indicated in my testimony on this bill on May 12, 1971 before the General Subcommittee on Labor, I believe that this is inappropriate legislation for dealing with trade problems. For that reason, I did not go into a detailed discussion of the substance of Title III at that time.

The Department of Labor is deeply concerned about the effects on labor of international trade. However, we do not favor Title III because its implementation would not serve the best interests of the United States and American workers.

The bill would, in effect, require the Secretary of Labor to recommend, and authorize the President to impose higher tariffs or import quotas on competitive imports produced abroad under working conditions below the U.S. minimum standards. This new grant of authority to the President would be sweeping. Since no other country, except possibly Canada, has such standards, virtually all U.S. imports would fall within its scope.

The President already has broad powers under existing legislation to curtail imports which adversely affect American industry and labor. Examples of such authority include the tariff adjustment provisions of the Trade Expansion Act of 1962, the Antidumping Act of 1921, the Agricultural Adjustment Acts of 1933 and 1956, and the Tariff Act of 1930. Further, the Administration is on record as favoring the liberalization of the adjustment assistance and escape clause procedures so that industries, workers, and firms can be better protected from import inquiry.

The net effect of any broad-scale restriction on our imports could be to reduce rather than increase employment opportunities in the United States. Other countries would be likely to take retaliatory action against our exports. Moreover, the ability of our trading partners to purchase U.S. goods would be curtailed since many of them depend on sales to the U.S. to earn the necessary foreign exchange to purchase our exports.

If enacted, the bill would have an inflationary impact by limiting the availability of competitive goods and by shifting U.S. consumption and production to higher cost goods.

Another proposed amendment would impose restrictions on government procurement and on any procurement financed in whole or in part by Federal funds of goods produced abroad under conditions less favorable than those specified in the Fair Labor Standards Act. In our view, this represents an extreme form of "Buy America" legislation, which in effect would require that practically all Federal procurements be limited to U.S.-made products. The effects would be inflationary and would reduce or destroy competition in many fields where it may be needed.

Moreover, this amendment would seriously jeopardize international efforts currently underway to reach agreement on a code of fair and equitable public procurement practices. One important objective of this effort has been to insure that U.S. exporters have the opportunity to compete for public procurement in other countries on the same basis as their foreign competitors.

I would like to emphasize that our opposition to Title III of H.R. 7130 in no way indicates a lack of concern about the problems faced by some workers adversely affected by import competition. However, in our view, this legislation is neither an appropriate nor feasible approach to such problems.

Sincerely,

J. D. HODGSON,
Secretary of Labor.

APPENDIX B

U.S. TRADE WITH JAPAN, THE FEDERAL REPUBLIC OF GERMANY, CANADA, AND THE UNITED KINGDOM

[In millions of dollars]

	1969	1970
JAPAN		
Exports, total	3,489.7	4,652.0
Foods, feeds, and beverages	756.9	971.3
Industrial supplies and materials	1,594.6	2,119.4
Capital goods including trucks and buses	853.2	1,201.3
Consumer goods, nonfood, including automobiles and parts	209.9	250.7
"Special category" and other exports	75.1	109.3
Imports, total	4,888.2	5,875.3
Foods, feeds, and beverages	137.1	169.9
Industrial supplies and materials	1,548.7	1,808.7
Capital goods including trucks and buses	613.3	658.2
Consumer goods, nonfood, including automobiles and parts	2,513.1	3,160.4
Other imports	66.0	78.1
FEDERAL REPUBLIC OF GERMANY		
Exports, total	2,142.1	2,740.2
Foods, feeds, and beverages	270.0	408.3
Industrial supplies and materials	802.5	961.7
Capital goods including trucks and buses	746.1	1,031.1
Consumer goods, nonfood, including automobiles and parts	131.2	159.7
"Special category" and other exports	192.3	179.4
Imports, total	2,603.4	3,129.6
Foods, feeds, and beverages	40.7	53.7
Industrial supplies and materials	618.5	722.1
Capital goods including trucks and buses	553.0	666.8
Consumer goods, nonfood, including automobiles and parts	1,305.6	1,599.8
Other imports	85.6	87.2
CANADA		
Exports, total	9,137.0	9,083.8
Foods, feeds, and beverages	646.8	741.7
Industrial supplies and materials	2,201.1	2,195.7
Capital goods including trucks and buses	2,825.0	2,793.5
Consumer goods, nonfood, including automobiles and parts	3,080.3	2,778.3
"Special category" and other exports	383.8	574.6
Imports, total	10,383.6	11,091.1
Foods, feeds, and beverages	577.9	644.6
Industrial supplies and materials	4,737.4	5,198.8
Capital goods including trucks and buses	1,384.1	1,481.8
Consumer goods, nonfood, including automobiles and parts	3,022.4	3,162.4
Other imports	661.8	603.5
UNITED KINGDOM		
Exports, total	2,334.6	2,536.8
Foods, feeds, and beverages	191.0	272.6
Industrial supplies and materials	794.0	886.6
Capital goods including trucks and buses	804.2	1,071.9
Consumer goods, nonfood, including automobiles and parts	158.0	166.7
"Special category" and other exports	387.4	139.0
Imports, total	2,120.4	2,195.8
Foods, feeds, and beverages	318.6	367.8
Industrial supplies and materials	463.9	485.7
Capital goods including trucks and buses	475.3	502.7
Consumer goods, nonfood, including automobiles and parts	747.5	727.2
Other imports	115.1	112.4
Total U.S. balance of trade with major partners:		
With Japan	−1,398.5	−1,223.3
With Germany	−461.3	−389.4
With Canada	−1,246.6	−2,007.3
With United Kingdom	+214.2	+341.0

SEPARATE VIEWS OF MR. ERLENBORN, MR. ESCH, MR. STEIGER OF WISCONSIN, MR. LANDGREBE, MR. RUTH, MR. VEYSEY, AND MR. KEMP

It has become almost a tradition in the Congress to introduce legislation increasing the minimum wage every five years or so. Because the Fair Labor Standards Act was last amended, and the minimum wage last increased, in 1966, this year is something of a target year for FLSA legislation. We point out, however, that, due to a variety of economic forces which have been building over the last five years, the President has decided that a new departure in economic policy is required now.

1971, therefore, is not just another year marking the end of the traditional five year FLSA cycle. All employers and workers have been called on by the President to cooperate in the implementation of his New Economic Policy, and to accept if necessary all but the most serious inequities in order to make it work. Union members with signed contracts calling for wage increases during the wage-price freeze have had to forego them. Manufacturers whose costs have risen may not raise prices during the freeze. We think, therefore, that increases in the minimum wage, particularly the schedule of increases provided in this bill, should not be mandated by the Congress now.

We are about to enter Phase II of the New Economic Policy. A Pay Board and a Price Commission have been set up to administer a program of wage and price increases which will cut inflation and will allow for steady growth. We think it is inappropriate for the Congress to remove a large area from the Pay Board's discretion by requiring increases for millions of employees. The Pay Board should first be given an opportunity to estimate the impact of increases in the minimum in terms of its overall pay policy and to make recommendations on the magnitude and timing of any increases. If necessary, the Committee can formally request such a recommendation from the Pay Board. At that time, the Committee can re-evaluate the provisions of H.R. 7130 and determine whether the increases provided are consistent with the stabilization program. For Congress to act before it has this information could seriously hamper the implementation of Phase II before it has started.

If the Congress nevertheless presses ahead with a new minimum wage bill now, we strongly urge a modification of the schedule of increases called for in this bill. H.R. 7130 originally provided for a $2.00 minimum wage for all covered non-agricultural workers effective on January 1, 1973. The Committee bill provides for an increase to $2 on January 1, 1972 for all workers covered before 1966. Non-agricultural workers covered as a result of the 1966 amendments or newly covered under this bill would attain the $2 rate on January 1, 1973.

When Secretary of Labor Hodgson testified on this bill last May, he opposed the schedule of increases contained in the original bill because they would be inflationary and would have a significant disemployment effect. This applies with far greater force now, for the amended bill brings workers to the $2 level a year earlier—less than two months after the start of Phase II. The increases in the minimum wage provided for in H.R. 7130 are considerably greater than those recommended by the Administration.

Statistics provided by the Labor Department show that the annual wage bill increase under H.R. 7130 would be approximately $2.9 Billion for the rates effective January 1, 1972 and $1.2 Billion for the rates effective one year later. In contrast, the Administration proposal would require estimated annual wage increases of about $700 million in early 1972 and about $900 million two years later.

Although immediate minimum wage increases may cause only a modest increase in the annual wage bills for the economy as a whole, minimum wage increases do not apply evenly, but are concentrated in certain regions and certain industries. The low-wage workers most effected by increases in the minimum wage are unskilled, and, in terms of productivity, marginal. Their jobs are extremely sensitive to wage changes. For these reasons, it is critically important to design minimum wage increases so that they will not only increase the earnings of the working poor, but will also protect their jobs and the employment opportunities of similarly situated workers.

The proposed immediate 40-cent increase in the minimum wage to $2.00 an hour for workers subject to the minimum wage prior to the 1966 amendments could, in some establishments, mean wage bill increases of up to 25 percent. Limiting the increase to $1.80 now and to $2.00 an hour in 1973 would not only provide workers some increases but would give employers time to make necessary adjustments to assure the continued employment of the affected workers.

For nonfarm workers covered as a result of the 1966 amendments and those newly covered by this bill, the immediate increase to $1.80 an hour and an increase to $2.00 only a year later could have an even more adverse impact, since this group of workers makes up a greater proportion of low-wage workers in the economy. The minimum wage applicable to these workers only reached $1.60 an hour on February 1, 1971—and, of course, no federal minimum applies to those newly covered by H.R. 7130.

Moreover, the passage of this bill would mean that workers first covered in 1966 will have received increases every year from 1967 through 1973 amounting in all to a 100% boost. Many more workers will be affected by the two increases called for in H.R. 7130 than were affected by the increases in the 1966 amendments. Without the proposed increases of H.R. 7130, more than one-fifth of the newly covered workers would be earning less than $1.80 in 1972 and over one-fourth would be earning less than $2.00 an hour in 1973. The 1968 increase to $1.15 raised the wage rates of a much smaller percentage of the workers to whom it applied.

Projected changes in average hourly earnings also suggest a delay of one year in the $2.00 minimum. If the minimum wage were increased at the same rate as the projected increase in average hourly earnings, the result would be a minimum of $1.70 an hour in February

1972 and less than $1.80 an hour in February 1973. (These projections were made before the wage-price freeze. It is likely that average hourly earnings will now increase at a lower rate.)

Because of the expanded coverage of the 1966 amendments, it is quite likely that increases in the minimum wage at this time would have greater overall impact than in previous years. As the minimum wage has reached more and more workers, its potential impact on the economy is more and more pervasive. This factor suggests that greater caution is called for in timing the increases.

JOHN N. ERLENBORN, M.C.
MARVIN L. ESCH, M.C.
WILLIAM A. STEIGER, M.C.
EARL F. LANDGREBE, M.C.
EARL B. RUTH, M.C.
VICTOR V. VEYSEY, M.C.
JACK F. KEMP, M.C.

ADDITIONAL VIEWS OF *MR. QUIE*

If the situation today were comparable to the situation when previous increases in the minimum wage occurred, I would have fewer qualms about an increase to $2.00 an hour beginning next year for those non-agricultural employees who were covered by the minimum wage prior to 1966.

Ratios of the minimum wage/average hourly earnings now are lower than at some previous times when legislation for an increase has been introduced; however, the Separate Views immediately preceding mine carry a paragraph which I think ought to be specifically brought to the attention of the House and with which I concur:

> We are about to enter Phase II of the New Economic Policy. A Pay Board and a Price Commission have been set up to administer a program of wage and price increases which will cut inflation and will allow for steady growth. We think it is inappropriate for the Congress to remove a large area from the Pay Board's discretion by requiring increases for millions of employees. The Pay Board should first be given an opportunity to estimate the impact of increases in the minimum in terms of its overall pay policy and make recommendations on the magnitude and timing of any increases. If necessary, the Committee can formally request such a recommendation from the Pay Board. At that time, the Committee can re-evaluate the provisions of H.R. 7130 and determine whether the increases provided are consistent with the stabilization program. For Congress to act before it has this information could seriously hamper the implementation of Phase II before it has started.

In a way, it is good that the House has been unable to bring before it H.R. 7130 prior to the establishment of the policies and decisions of the Pay Board and the Price Commission. When they have been in operation for some time, I believe the House will more capably be able to determine the level of the minimum wage for calendar year 1972.

ALBERT H. QUIE, M.C.

ADDITIONAL VIEWS OF MR. ESCH, MR. ESHLEMAN, MR. STEIGER OF WISCONSIN, MR. LANDGREBE, MR. FORSYTHE, AND MR. VEYSEY

The need and justification for the agricultural processing and seasonal industry exemption remain as valid today as they have since 1938. Unavoidable seasonality of supply and highly perishable commodities make lengthy processing days absolutely essential. These factors also mandate the location of the plants in rural areas where the shortage of seasonal labor during the peak processing periods makes it very difficult for many employees to find sufficient labor to operate on a basis of eight hour shifts. Overtime is the only answer. The imposition of a statutory premium for all overtime under these conditions is not only inequitable, but is ineffective in achieving the purpose of spreading work and reducing unemployment.

The precarious economic condition of the canning industry, for example, is well documented. The National Canners Association states that according to the *1967 Census of Manufacturers*, the number of establishments canning fruits and vegetables decreased 25 percent from 1,630 in 1958 to 1,223 in 1967. Many canners will find it impossible because of their economic and geographic situation to operate without the present limited exemption for penalty overtime. If the raw product cannot be handled as it comes to the canning plant, much of it will be wasted, and delay in packing will reduce the quality of the canned product. The waste and reduction in quality, combined with the almost certain higher prices necessitated by decreased production or by payment of the penalty overtime, would mean that the consumer would receive an inferior product at an inflated price.

We support the phasing down of the number of workweeks in the year and hours in the day for which the exemption applies on the basis that recent increases in technology partially offset the adverse economic impact. We believe, however, that the complete repeal of the overtime exemptions for the agricultural processing and seasonal industries will not be in the best interest of the affected employees, employers, or the consumer.

MARVIN L. ESCH, M.C.
EDWIN D. ESHLEMAN, M.C.
WILLIAM A. STEIGER, M.C.
EARL F. LANDGREBE, M.C.
EDWIN B. FORSYTHE, M.C.
VICTOR VEYSEY, M.C.

ADDITIONAL VIEWS OF MR. VEYSEY

I want to call attention to two specific aspects of this bill which need correction on the Floor of the House.

OVERTIME EXEMPTION FOR SUGAR

Sugar is a basic and indispensable commodity. It is essential to the preparation of almost everything we eat. Because the Federal regulations under which sugar is grown are tailored around its special harvesting problems, the cost of the sugar in the things we eat is one of the best bargains in American agriculture today.

But the harvest problems for beet and cane sugar are real. The harvest is always subject to the hazards of weather. Once begun, the harvest season is extremely short. A storm or a frost may destroy sugar cane or beets and disrupt the harvest schedule. Around-the-clock harvesting every day of the week is essential. The Committee bill would delete the long established overtime exemption for sugar. It would seriously injure the sugar industry across the country. It will force marginal producers out of business and their workers onto the unemployment rolls. Just as important, the multiplier effect of raising the cost of this basic ingredient will lead to disproportionately higher food prices for consumers everywhere.

The overtime exemption for sugar is vital to the sugar industry in California, Hawaii, Colorado, Louisiana, Florida, Texas, North and South Dakota, Utah, Idaho, Wyoming, Michigan, Minnesota, New York and Oklahoma. I urge my colleagues to join me in restoring it.

DIFFERENTIAL FOR YOUTH

The second area that concerns me is the need for an effective differential wage for young people. The present approach restrict such special wage rates to full-time students in farming, retail and service establishments, after an express certification for each student from the Secretary of Labor. The paper shuffling involved would discourage taking advantage of this provision, and the full-time student restriction would lock out thousands of school dropouts who need jobs worse than their peers in school.

Young people everywhere need above all else to relate to the real world of work and to have an opportunity to develop self-reliance and job skills. An effective youth differential can make possible what the present provision chokes off. At the same time, the link between unemployment and crime in this age group is direct. As the percentage of unemployed teenagers skyrockets, so does the added cost to society brought on by their crime. Ineffective, and self-defeating youth differentials only compound the problem.

Therefore I support the counterproposal on youth differential to be offered by my Committee colleagues.

VICTOR V. VEYSEY, M.C.